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No.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In the Matter of

LAWRENCE CRAWFORD BRAGG

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

LAWRENCE C. BRAGG
15454 East Gale Avenue
Hacienda Heights, Ca. 91745-1500

1-626-961-0511

Petitioner Attorney *Pro Se*

4/4/pp

QUESTIONS PRESENTED

1. Is the addition of new charges of commission of a crime and aiding the commission of a crime after the completion of an attorney disciplinary proceeding which is based on the testimony of the attorney such a denial of due process of law and violation of this Court's decision in **In re: Ruffalo** that the petition should be entertained to void a one year actual suspension of a thirty four year practicing attorney who has no prior record?

2. When a decision has four substantial new charges added at the review level without notice and the original charges not addressed, should not this Court entertain the Petition to provide due process for an attorney?

3. Is the absence of recusal remedies for State Supreme Court Justices a violation of due process of law?

4. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits, a lack of

a fair and impartial adjudicator?

5. Is the administrative decision-making by one who obtains monies to recoup his salary and benefits and those of his co-employee prosecutors and investigators for his private employer and other funds for his employer's private projects from each accused he finds guilty a lack of a fair and impartial adjudicator?

6. Is the employment, housing, training, providing of staffs, facilities, expenses, offices, pay and benefits to a judge by a privately financed party such a position of dependence on a party that such a judge is required to be recused from the party's cases?

LIST OF PARTIES

The parties are as follows:

LAWRENCE C. BRAGG
15454 East Gale Avenue
Hacienda Heights, Ca. 91745-1500

1-626-961-0511

Petitioner Attorney ***Pro Se***

MARIE F. MOFFAT
RICHARD ZANASSI
YVONNE JARAMILLO
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, Ca. 94102

1-415-561-8200

Respondent State Bar of California

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LAWRENCE CRAWFORD BRAGG

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, Case No. S062861, entered on December 10, 1997.

Said judgment did not address the petitioner's motion for recusal and denied a Petition for Review. Said judgment is identical to that already prepared and submitted for signature by the California Supreme Court's appointees to the State Bar of California. Appendix A.

Indicative of the lack of opportunity for review, the summary judgment was prepared before the attorney filed his motion for recusal and petition for review. As such, it never addressed the motion for recusal nor the merits of the petition for review. The order was already prepared before the attorney filed for review.

The Petitioner is an attorney at law for thirty four years. He has no record of discipline imposed upon him.

The summary judgment at issue imposes a one year actual suspension of the petitioner's license to practice law. Appendix A.

This Petition is filed to address the lack of conformity with this Court's decision in **In re: Ruffalo** 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222 (1968) concerning notice to an accused attorney and this Court's decision in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) concerning the requirement of a fair and impartial adjudicator within a State Supreme Court.

On October 12, 1997 the Governor of the State of California vetoed the bill authorizing the State Bar of California to collect mandatory dues from its compelled members. He stated it was "over bloated, arrogant, irresponsible, and unresponsive," with an appearance of impropriety in its functions.

With the defunding of the 103 million dollar budget of the State Bar of California, findings of culpability of accused attorneys is essential. Such findings assess the salaries and benefits of the State Bar's judge, prosecutor, investigator, and staff upon each attorney found culpable of public discipline. This sum for the three years, 1992-1995, exceeded sixteen million dollars.[1] The judges whose salaries and benefits are assessed against the attorney are the appointees of the California Supreme Court to the State Bar of California. Said appointees are paid

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Sixty million dollars has been vetoed since the active 120,000 attorneys were required to pay $478.00 a year in annual dues. Inactive attorneys were required to pay approximately $75.00 a year. The California State Auditor, May, 1997 report, "The State Bar of California: Opportunities Exist to Reduce Fees, Better Control Administration and Planning, and Strengthen an Improved Discipline Process," at 10, revealed that the State Bar assessed in excess of sixteen million dollars for itself from findings of culpability for the years 1992 through 1995.

their respective $130,000 and $150,000 salaries plus their perks from such sums, now that mandatory dues assessed by the State Bar of California have been vetoed.

Indicative of this substantial financial interest for its appointees to the State Bar of California, the California Supreme Court imposed said sums upon the petitioner and made said sums payable as mandatory dues. Appendix A. That sum is $4,314.00. Appendix E-8.

I.

ORDERS BELOW

The summary judgment of the California Supreme Court prepared by the State Bar of California which did not address the motion for recusal and which denied the Petitioner's Petition for Review and which entered an order of an actual one year suspension on the Petitioner is reproduced at Appendix A.

"State Bar" hereinafter refers to the State Bar of California. Unless otherwise indicated, "Sections" refers to sections of the California Business and Professions Code.

"Rules," unless otherwise indicated, refers to the California Rules of Professional Conduct.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on December 10, 1997. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Art. 6, sec.1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts."

Art. 6, sec. 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a), 6106, and 6140.7. They are set forth at Appendix F.

IV.

STATEMENT OF THE CASE

The California attorney disciplinary system is composed of hearing and review department judges, prosecutors, investigators and staff employed by the State Bar of California. The entity before whom the matter is heard is an office within the State Bar of California. It is called the State Bar Court of the State Bar of California. Its judges, like it prosecutors, are employees of the State Bar of California. They are paid from the private revenues of the State Bar. Those funds included mandatory dues. On October 12, 1997 the Governor of the State vetoed the bill authorizing the State Bar to collect

mandatory dues. Revenues are presently dependent on findings of culpability of accused attorneys and private projects and sales.

In 1989, 1994, and 1995, the California Supreme Court appointed a total of fifteen employees to the State Bar. Their appointees are denominated judges of the State Bar's Court. The hearing judges appointed are required by statute to be paid $130,000 base salaries. The review department judges who are attorneys are required to be paid base salaries of $150, 000 a year. The one lay review department judge is paid $75,000 a year. There are five hearing judges. There are three review department judges. Two are lawyers and one is a non-lawyer.

Since its appointment of employees to the State Bar in 1989, the California Supreme Court has declined to grant review to any accused attorneys. Its appointees to the State Bar prepare the California Supreme Court's summary order. This summary order for the signature of the Chief Justice of the California Supreme Court is prepared and sent with the appointees' transmittal to the California Supreme Court of its

recommendation as to discipline. Appendix E. As in this case, any petition and motion submitted by the accused attorney to the California Supreme Court is not addressed. The summary order is already prepared for immediate signature before the accused attorney files anything. The filings of the accused attorney are ignored and never addressed. Appendices A, B, and C.

There were four changes of the charges and additions of new charges after the completion of the trial in petitioner's case. A moral turpitude charge which was never noticed and upon which the judgment depended was added in the review department after completion of oral argument. A new claim of commission of a criminal act as an aggravating factor was added without notice after the completion of proceedings in the review department. The lack of competence claim was changed in the review department from that which was noticed to something completely different. And there was no identification of what subdivision of the competence rule was the one at issue. As set forth in the attorney's petition for review filed with the California

Supreme Court, "This reckless abandon of the due process rights of accuseds is inspired by the knowledge that there is no judicial review ever permitted of what the Review Department of the State Bar's Court does. This has led to an unbridled license within it to change the proceedings in any way they want without notice."

The defective notice resulted in findings based on claims never made violates the first principal of due process: an accused is entitled to fair notice of the claims. This Honorable Court has stated that an accused attorney is entitled to notice of the charges against him at the commencement of proceedings. **In re Ruffalo,** 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222 (1968).

The petitioner respectfully requests that this Honorable Court address the violation of the Supremacy Clause occasioned by the taking of a vested license to practice law of thirty four years by way of findings based on unnoticed and altered charges.

The petitioner respectfully requests that this Honorable Court also address the significant and substantial United States

Constitutional issue of what relationship between a judge and a party disqualifies the judge from participation in a case.

V.

REASONS FOR GRANTING THE WRIT

A. There Were Four Changes and Additions of New Charges after the Completion of Trial

As held by this Court in **In re Ruffalo, supra**, at 551, "The charge must be known before the proceedings commence."

In that case one of the grounds of disbarment of the attorney was the attorney's employment of one Orlando as an investigator. That was not included in any charge made prior to the disbarment hearing. This is identical to the situation here. Attorney Ruffalo was not aware that it would be considered as a disbarment offense until after both he and Orlando testified on all aspects of that phase of the case. This Honorable Court held that the disbarment proceedings "become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh. How the charge would

have been met had it been originally included in those leveled against petitioner . . . no one knows... This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process."

The majority in **In re Ruffalo**, 390 U.S. 544 (1968) held that a change in the charges against the petitioner during proceedings before the Ohio Board of Commissioners violated due process. The feature of that case that was particularly offensive was that the change was such that the very evidence put on by the petitioner in defense of the original charges became, under the revised charges, inculpatory. Thus, in that case, the original charges functioned as a "trap," id., at 551, for they lulled the petitioner into presenting evidence that "irrevocably [assured] his disbarment under charges not yet made." Id., at 551, n. 4.

The situation is identical herein. The attorney and the person involved in the claims of a partnership with a non-lawyer and sharing fees testified as to their arrangement and their intent. It was this testimony that led to the changing of charges, adding

of charges, and new claims of commission of a crime resulting in the disposition and punishment of a one year actual suspension. It was the attorney's candid testimony that resulted in an abandonment of the original lack of competence claim and the addition of multiple, unnoticed new claims in lieu thereof.

1. The Finding of Aiding the Commission of the Crime of Unauthorized Practice of Law which was added after the Fact Violates Due Process of Law

The attorney admitted entering into a contract with a pre-litigation professional contract company for nine months. That contract permitted the attorney to have a professional company investigate cases, obtain medical records, police reports, and witness statements on his personal injury cases. This permitted the attorney to have all of the required information when he proposed settlement offers. It helped him to decide whether litigation was necessary in a particular case. The professional staff of the prelitigation company, supervised by the attorney, would discuss settlements with insurance companies in an effort to avoid litigation. Once it became apparent that a case could not

be settled upon reasonable terms, the case was removed from the pre-litigation group of cases, and the attorney handled the filing and follow-through with the litigation personally.

Pre-litigation contracts are currently in active use in Southern California. They expedite and avoid unnecessary litigation. The attorney's time and energy is better utilized on behalf of clients. The pre-litigation group does not become involved once litigation is commenced. The pre-litigation group focuses on preparing each case for an excellent settlement and making every effort to have cases promptly resolved.

The payment terms were agreed to be a percentage of the net profits from the settlements after the deduction of office expenses. While the fee-splitting charge was based on the attorney's ignorance and his belief that the deduction of office expenses from the compensation paid insulated the payment terms, there was no charge that the attorney committed a crime or aiding in the commission of a crime.

Count two of the Notice of Disciplinary Charges alleged

that "you hired Bruce Hickman to assist you with your office management problems. Bruce Hickman was not an attorney licensed to practice law.... You operated out of an office in Hacienda Heights, and Hickman operated out of an office that he rented from an attorney named Arthur Ackerman... You agreed to share office expenses with Ackerman since you had clients in Ontario as well as Hacienda Heights. You did work out of both offices. You entered into an arrangement with Hickman whereby Hickman was paid a percentage of the income from all of the cases settled by Hickman, after deducting the office expenses of each of the offices.... You entered into and maintained a partnership with a non-attorney, and you shared legal fees with a non-attorney. You committed the above-described acts in willful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6106, and Rules of Professional Conduct 1-310 and 1-320." Appendix D-5.

The review department of the State Bar's Court found

that, "... we do not find that respondent entered into a partnership with Bruce Hickman... We find in aggravation that respondent violated current rule 1-300 in aiding a non-lawyer to engage in the practice of law." Appendix B-3.

The Notice did not allege a violation of rule 1-300.[2] It alleged a violation of rules 1-310 and 1-320.[3]

The new charge of aiding the unauthorized practice of law which was added after the completion of the trial denied a fair hearing and a fair procedure. Had Hickman and the attorney been apprized in advance that the State Bar's judges would change the charges and add new ones in lieu thereof after the proceedings were completed based on their respective testimonies

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Rule 1-300(A) provides, "A member shall not aid any person or entity in the unauthorized practice of law."

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Rule 1-310 provides, "Forming a Partnership with a Non-Lawyer," that "A member shall not form a partnership with a person not licensed to practice law if any of the activities of that partnership consist of the practice of law." Rule 1-320 provides," Neither a member nor a law firm shall directly or indirectly share legal fees with a person or entity not licensed to practice law..."

concerning their agreement, both persons would have exercised the privilege not to testify concerning those matters.[4]

The new added charge of aiding the unauthorized practice of law accuses the attorney of aiding the commission of a crime[5] and of committing the crime of aiding the commission of a crime.[6]

Both witnesses were surprised to learn that the proceedings had been completely changed. The addition of a claim that Hickman was a criminal who had committed a crime which the attorney aided and that the attorney was now a criminal himself was now the new basis for the findings.

Hickman had no day in court. He had no jury trial. He

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4 This Court's decision in **Spevack v. Klein** (1967) 385 U.S. 511, 37 S. Ct. 625, 17 L. Ed. 2d. 574 states that the privilege against self-incrimination is applicable in attorney disciplinary proceedings.

5 Section 6126 states that any person practicing law who is not an active member of the State Bar is guilty of a misdemeanor.

6 Whether the crime is viewed as accessory before or after the fact, the findings accuse the attorney without notice, trial, or opportunity to be heard, of committing a crime. See **United States v Daddano** (1970, CA7 Ill) 432 F2d 1119, cert dismd (1971) 401 US 967, 28 L Ed 2d 250, 91 S Ct 990 and cert den (1971) 402 US 905, 28 L Ed 2d 645, 91 S Ct 1366, 1399.

had no constitutional court of law. He had no constitutional judge. There was no adjudication by a court of law that Hickman engaged in the unauthorized practice of law. The petitioner also had no day in court on the issue. How could the petitioner be found to have aided a non-event? And without notice of such a charge?

2. The Finding of Moral Turpitude Of Commission of a Crime was Unnoticed

Count two of the Notice to Show Cause asserted that the same facts that constituted a violation of rules 1-310 and 1-320 concerning forming a partnership with a non-lawyer and sharing fees with a non-lawyer also constituted an act of moral turpitude violation. It stated that, "You entered into and maintained a partnership with a non-attorney, and you shared legal fees with a non-attorney. You committed the above-described acts in willful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6106, and Rules of Professional Conduct 1-310 and

1-320." Appendix D-5

Section 6106 states that "the commission of any act involving moral turpitude, dishonesty or corruption... constitutes a cause for disbarment or suspension."

This Honorable Court has addressed the due process problem inherent in the term "moral turpitude." This Honorable Court has held it generally applies to acts of fraud or dishonesty. **Jordan v. De George** 341 U.S. 223; 71 S. Ct. 703; 95 L. Ed 886 (1951).

The totem poling of multiple charges from the same acts is a pervasive problem. Many of the statutes, such as the act of moral turpitude statute, are one hundred and twenty four years old. They are vague, indefinite, and undefined by case law. They predate this Court's decisions concerning fair notice requirements.

The lack of adherence to this Court's criteria that specific statutes supplant general ones and that duplicative charges are not permitted is evident in the double and triple charging involved

herein. The two distinct prohibitions on fee-splitting and forming a partnership with a non-lawyer are double charged by claiming that the two separate violations form a third violation, to wit, an act of moral turpitude.[7]

Neither separate offense involves fraud or dishonesty nor do they constitute fraud or dishonesty placed together. However, the finding was that the attorney did not form a partnership with a non-lawyer, thereby excising fifty percent of the claim of an act of moral turpitude. The finding therefore would rest exclusively on the fee-splitting claim, which was a separate violation found. This would be an impermissible duplication of the same charge. The solution was to stretch the proceedings beyond their noticed parameters to, once again, change the charge after the fact.

Instead of the noticed claims, the findings operate to find no partnership and instead change, without notice, the claim of

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[7] See **Blockburger v. United States** 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306, 309 (1932). "The priority of specific over general provisions is a basic principle of statutory construction. **Monte Vista Lodge v. Guardian Life Ins. Co. Of America** 384 F.2d. 126, 129 (9th Cir. 1967), cert. denied 390 U.S. 950, 88 S. Ct. 1041, 19 L Ed. 2d. 1142 (1968)."

moral turpitude to something completely different. It claims that, "The State Bar has charged respondent with commission of acts of moral turpitude... To properly evaluate this charge we look to the acts .....shown by the record that would constitute aggravation." It is axiomatic that, after trial, **In re: Ruffalo, supra**, does not permit the charge to be changed from the one noticed to a new and completely different one as was done here. It is also axiomatic that the court may not make up a new charge after the fact of trial by claiming as does the decision that,"Although not charged, the record is reviewed to determine if respondent is culpable of aiding a person or entity in the practice of law in violation of current rule 1-300(A)."

This complete change of the charge and addition of a new charge after the fact is especially egregious as this finding, without notice or trial, indicates that the moral turpitude charge was required to be dismissed. But instead of dismissing it, the review department of the State Bar's Court made up a new charge of aiding the commission of a crime and committing one.

That the attorney was found culpable of a criminal offense never prosecuted or noticed by altering the charges to add a new charge of "aiding the unauthorized practice of law," and the moral turpitude charge was also changed from forming a partnership and fee- splitting with a non-lawyer to the new claim of committing a criminal offense and aiding a criminal in committing a crime is due to the lack of any possibility of any constitutional court supervision or control over the State Bar and its court. There is no effective or unbiased court access.

Petitioner was denied, at every stage, and in multiple respects, his due process and equal protection rights under the fourteenth amendment to a "meaningful opportunity to be heard in a meaningful manner" as required under **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965).

3. The Competence Claim was Changed from not Serving One Defendant to a Multitude of Other Claims Based on the Testimony of the Attorney

Petitioner contends that the State Bar's failure to give him

fair notice of the precise competence charge leveled against him in the disciplinary proceeding worked a violation of due process, see **In re Ruffalo**, 390 U.S. 544 (1968).

The review department decision states that the Petitioner, "failed to make claim on her purported insurance, he took no action to prosecute Harmon's case other than file a complaint and the first amended complaint, he caused no independent discovery, and he failed to cause service to [sic] made in such a manner to prevent a motion for discretionary dismissal. Petitioner argues that as early as September 1990 he concluded that Harmon's case was not meritorious. In spite of that he remained counsel of record and performed some services until September 1991. Following our de novo review we conclude that respondent is culpable of violating current rule 3-110(A)."

These claims were not contained in the notice served on the Petitioner. Appendix D-2-D-4. They were added after the attorney testified and was asked questions beyond the scope of the Notice. They were added after the trial was concluded and

the matter presented for review to the review department. [8]

The Notice to Show Cause alleged that the lack of competence was that, "following the substitution of the respondent out as the attorney of record in September, that three to four months later, in December of 1993, the court dismissed a defendant from the case for failure to serve it within two years of the commencement of the action. You failed to perform the legal services for which you had been hired." Appendix D:2-3:1-16. The dismissal was the result of the successor attorney's inaction. The petitioner was not the attorney of record.

It was the testimony of the attorney that was used to make up a new charge after the trial was concluded. This is identical to the **Ruffalo** situation. Refer footnote 8.

The decision claims that the lack of competence is completely different from the noticed claim. The Petitioner was not

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[8] It was the cross-examination beyond the scope of direct that elicited the claims now made as the attorney was asked whether he filed an at issue, conducted discovery, interviewed witnesses, issued a demand letter, hired an outside accident reconstruction expert, as to which the Petitioner replied that he did not recall. TR:VII:2: 22-25, 3:1-9.

permitted to know of such claims. He was not permitted to rebut them. He was not permitted to offer expert witness testimony on each of the issues before the findings were made and the proceedings concluded. Identical to in **In re:Ruffalo, supra,** this only arose after the Petitioner testified with no knowledge such testimony would be proposed to be the new, unnoticed charges upon which culpability would be based. Refer footnote 8.

This lack of proper notice requires as in **In re: Ruffalo, supra,** that the finding of a lack of competence be excised and voided for lack of due process of law, and the judgment voided for lack of due process of law.

4. There was no Notice of the Subpart of the Competence Rule Claimed to Have been Violated

The competence rule does not cover simple negligence. In order for a disciplinary offense to be pled and found, the rule requires that the failure to perform with competence be done

recklessly, repeatedly, or intentionally. [9] The notice served on the Petitioner did not specify whether it was claimed the act was done intentionally, repeatedly, or recklessly. Appendix D-2-D-4.

The review department decision repeats this flaw by making no finding of what subpart is claimed to have been violated. It just concludes that there is a violation of the rule. It identifies no subpart claimed to have been violated. Appendix B-37-B-39.

This Honorable Court has stated that an attorney is entitled to fair notice of the facts relied on in support of the charges, so he may prepare and defend. **In re: Gault** 387 U.S. 31, 34, 18 L. Ed.2d. 527, 87 S. Ct. 1428 (1967), **Gentile v. State Bar of Nevada** 115 L. Ed. 2d. 888, 111 S. Ct. 2720 (1991), **In re: Gault** 387 U.S. 31,18 L.Ed.527, 87 S.Ct.1428 (1967). Part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are in fact. See **In re Gault, supra,** at 33-34, and n. 54 (1967).

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California Rules of Professional Responsibility Rule 3- 110(A), entitled "Failing to Act Competently," states, "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

Procedural due process rules were meant to protect persons not from a deprivation, but from the mistaken or unjustified deprivation. **Carey v. Piphus** 435 U.S. 247, 259, 98 S. Ct. 1042, 1050, 55 L.Ed.2d. 252 (1978). Thus, they impose constraints on government action. **Mathews v. Eldridge** 424 U.S. 319, 332, 96 S. Ct. 893, 901, 47 L.Ed. 2d. 18 (1976).

An accused must be given written notice informing him of the specific issues that he must meet, at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. **In re: Gault, supra**, at 31-34.

In the instant case, the one year actual suspension of a thirty four year practicing attorney who has no prior complaints or record operates as a *de facto* disbarment of his right to practice his profession. It does so based on a record indicating a results oriented decision. The charges were changed when it became clear that exoneration of the accused attorney was the appropriate disposition of all of the charges except for perhaps the fee-splitting claim. This would have warranted a reproval.

Instead, the attorney is labeled a criminal who aided a criminal in his commission of a crime. He is labeled an unfit attorney who is guilty of moral turpitude on new unnoticed claims. He is labeled an incompetent attorney. His claimed incompetence is based on claims for which there was no notice, evidence, opportunity to rebut, or opportunity to present evidence.

These reputation destroying labels are published throughout the state by the non-lawyer and two lawyers in the State Bar who changed all of the charges without notice.[10]

Not only is there no notice of the actual charges and no opportunity to defend, but the first notice of the new charges that an attorney has is when the attorneys and judges in his State read them as findings of guilt of the attorney in the daily newspaper the next day before the attorney receives his copy of the decision. With alarm and horror the attorney discovers that the non-lawyer

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10 Appendix B-1 indicates the State Bar's review department certified its decision for publication. This caused the decision to be published as if it were a court decision when it was solely a recommendation for the California Supreme Court in the **Los Angeles Daily Journal** legal newspapers and in all of the legal newspapers throughout the State.

and two lawyers in the State Bar changed all of the charges, added crimes, and made findings of the commission of crimes and of moral turpitude and of incompetence that were never noticed, discussed, nor addressed.

B. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems

The Motion for Recusal of the California Supreme Court Justices which was filed with the Petition for Review on September 16, 1997 was not acted upon. It is hereinafter attached at Appendix C.

Since the California Supreme Court's orders are already prepared by the State Bar and sent with its transmittal of its recommendation to the California Supreme Court, nothing filed by an attorney requesting review or recusal of the members of the California Supreme Court is considered or acted upon by it. Appendices A, C, and E.

Since the judgment was already prepared before the attorney filed anything, it did not address the motion for recusal of the

members of the California Supreme Court. Appendix A.[11]

The lack of statutes, rules, or constitutional provisions permitting recusal of a State Supreme Court judge in the California system poses the problem that a party has no procedural remedy to assure a fair and impartial adjudicator within its State Supreme Court.

C. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning The Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused, **Aetna Life**

11

This Honorable Court has held that an unlawful delegation of judicial power occurs when a person other than the judicial officer entrusted with the judgment makes the judicial decision. See **United States v. Raddatz** 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed.2d 424 (1980), **Sunshine Anthracite Coal Co. v. Adkins** 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. (1940). In **Burlington Northern v. Department of Revenue** 934 F.2d. 1064 (9th Cir. 1991), at 1073, when a judge "delegated the judicial decision making function as to the entire case...." to a non article III judge, this was held to be the unlawful delegation of judicial power to a non-judge.

Insurance Company v. La Voie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is privately financed, and where by having it prepare its orders in advance of any filing by the accused attorney, it has delegated its judicial powers to it, and summarily denies all issues of all accused attorneys, and orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

D. Administrative Adjudicators Selected, Hired, and Employed by a Party is A Lack of a Fair and Impartial Adjudicator

Pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed.2d.267 (1972), even if there were neutral review by the State Supreme Court, the fact that the adjudicatory proceedings in the lower levels lack a

fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant.

Is not the employment, housing, training, providing of all staff, expenses, facilities, pay, expenses, and benefits for a judge by a privately financed party appearing before the judge such bias that the petitioner was denied a fair and impartial adjudicator at the hearing and review department levels within the state system?

E. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings Against Accuseds denies a Fair and Impartial Adjudicator

Three layers of awards are imposed on adjudged guilty attorneys: the salaries and benefits of the judge and his co-employee prosecutor and investigators, sanctions to fund the State Bar Client Security Fund, and forced enrollment in sections, examinations, schools, classes owned and run by the State Bar. The State Audit reveals those sums in three years exceeded

sixteen million dollars. Refer footnote 1. Is the amount important or the existence of the financial interest?

Proceedings conducted by members of a Board of a State Bar Association wherein they desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for lack of due process of law. **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983).

Conclusion

The multiple constitutional violations of the notice requirements in this case are far more serious than those in **Ruffalo, supra**. They suggest a course of conduct of violation of the Supremacy Clause of the United States Constitution that is endemic resulting from the privatization of attorney discipline within a financially interested party.

An attorney of thirty four years with a blemish-free record should be entitled to access to his licensing court to present his constitutional issues and have them considered and addressed.

The fact that the judgment was written before the attorney filed anything and was written by the party to whom the California Supreme Court has appointed employees is indicative of a partisanship within the California Supreme Court which should be addressed and remedied.

The employees of a party who sit as its judges faced with defunding and lay-offs appears to be so result-oriented that findings are made with no charges and charges are changed and new charges added after the fact. This appears to be done to justify the imposition of substantial discipline on an attorney who presents constitutional issues about the validity of this system and whose honest mistake about his fee-splitting arrangement must be escalated into findings of the commission of a crime, of aiding a criminal in his commission of a crime when he had no trial, of criminal misconduct, of corruption, dishonesty, and moral turpitude, and of incompetence.

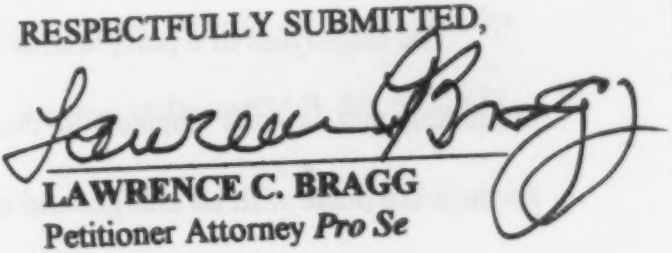
Due to the significance of the notice and partisanship issues, the petitioner respectfully requests that this Honorable Court

entertain this petition for a writ of certiorari.

By reason of the irreparable harm to the attorney's thirty four year reputation, law practice, and career, a Stay of proceedings should be granted pending this Court's final review.

RESPECTFULLY SUBMITTED,

Dated: January 7, 1998



LAWRENCE C. BRAGG
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 7th day of January, 1998 at Los Angeles, California.

RESPECTFULLY SUBMITTED,

Dated: January 8, 1998

LAWRENCE C. BRAGG
Petitioner Attorney *Pro Se*

OPY

Supreme Court, U.S.
FILED

No. 97 1168 JAN 12 1998

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

In the Matter of

LAWRENCE CRAWFORD BRAGG

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

LAWRENCE C. BRAGG
15454 East Gale Avenue
Hacienda Heights, CA
91745-1500

1-626-961-0511

Petitioner Attorney ***Pro Se***

10 pp

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F- State Statutes

SUPREME COURT FILED
Dec 10 1997
Robert Wandruff Clerk
Deputy

S062861
SBC #85-0-12550

IN THE SUPREME COURT OF CALIFORNIA

IN RE LAWRENCE CRAWFORD BRAGG ON DISCIPLINE

Petition for writ of review is denied.

It is ordered that **Lawrence Crawford Bragg** be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including one year actual suspension, recommended by the Review Department of the State Bar Court in its opinion filed April 28, 1997. It is also ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See Segretti v. State Bar {1976} 15 Cal.3d 878, 891, fn.8). It is further ordered that he comply with Rule 955, California Rules of Court, and that he

perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 payable in accordance with Business and Professions Code section 6140.7, as amended effective January 1, 1997.

*See Business and Professions Code section 6126. subd, (c).

George
Chief Justice

I, Robert V. Wandruff, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this _____ day of Dec. 11 1997

By K. Robinson

Deputy Clerk

PUBLIC MATTER-CERTIFIED FOR PUBLICATION

FILED
APR 28 1997
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of 85-O-12550

LAWRENCE CRAWFORD BRAGG, OPINION ON REVIEW

A Member of the State Bar

Respondent Lawrence Crawford Bragg seeks review of a hearing judge's decision on a four-count charge against respondent in which the hearing judge found respondent culpable on each of the four counts. The hearing judge recommended a two-year stayed suspension and two-year probation, conditioned on one-year actual suspension along

with certain other conditions.[1]

In a general count (count two), respondent was charged with entering into a partnership with a non-lawyer that involved the practice of law in violation of current rule 1-310, Rules of Professional Conduct,[2] sharing legal fees with non-lawyer in violation of current rule 1-320, and engaging in an act or acts that involved moral turpitude in violation of Business and Professions Code section 6106.[3] The hearing judge found respondent culpable of each of the charges under this count, including a finding that respondent's conduct involved moral turpitude.

On the first count, involving client Renee Harmon

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1 At page 1 of the decision, the hearing judge's decision recites "two (2) years probation including four 14) years actual suspension." We treat this as a clerical error.

2 Current rule shall refer to the Rules of Professional Conduct in effect since May 27, 1989; and former rule shall refer to the Rules of Professional Conduct in effect not earlier than January 1, 1975, and not later than May 26, 1989.

3 Unless otherwise indicated, section shall refer to the Business and Professions Code.

(Harmon), respondent was charged with violation of section 6068., subdivision (m) (requiring an attorney "(t) to respond promptly to reasonable status inquiries of clients"), rule 3-110(A) (requiring that a lawyer "not intentionally, recklessly, or repeatedly fail to perform legal services with competence"), and rule 3-700(A)(2) (prohibiting attorney from withdrawing from employment until reasonable steps are taken to see that harm will not result to the client). Respondent was found not culpable of violation of section 6068, subdivision (m) and culpable on the other two charges.

In count three, respondent was charged with and found culpable of violating section 6068, subdivision (1) (requiring an attorney to keep all agreements made in lieu of disciplinary prosecution). The agreement in lieu of discipline required respondent to take and pass the California Professional Responsibility Examination (CPRE) and to take a course in law office management, all within one year. Respondent failed to do either.

In count four respondent, as a part of his agreement in

lieu of discipline, which was the subject of count three, admitted a violation of former rules 6-101(A)(2) and 6-101(2), and sections 6068, subdivision (a) and 6103, as a part of his stipulation leading to his agreement in lieu of discipline, The facts admitted in the stipulation are included in our review of the evidence.

We agree with the hearing judge that the misconduct was serious; however, we do not find that respondent entered into a partnership with Bruce Hickman, although we find respondent did have an agreement with him that amounted to sharing legal fees with a non-lawyer in violation of current rule 1-320. We f ind in aggravation that respondent violated current rule 1-300 in aiding a non-lawyer to engage in the practice of law. We further find that the misconduct involved moral turpitude in violation of section 6106.

As to count one, the Harmon matter, following analysis, we agree with the hearing judge that there was not clear and convincing evidence of violation of section 6068, subdivision (m). We determine that there is not clear and

convincing evidence of culpability of violation of current rule 3-700 (A) (2) . We agree with the hearing judge that respondent is culpable of violating current rule 3-110(A).

The culpability under section 6068, current (1) (failing to comply with the terms of an agreement in lieu of discipline) (count three) is clear. The issue is not mentioned in the briefs of respondent, and without further comment, we affirm the hearing judge's findings.

The respondent, in reaching the agreement in lieu of discipline, has admitted the violations charged in count four, and again we affirm the findings of the hearing judge without further comment.

After giving weight to our determination that respondent was culpable of moral turpitude under section 6106, we affirm the discipline recommended by the hearing judge that respondent be suspended from the practice of law for two years, that this suspension be stayed, and that respondent be placed on probation for two years, on the condition that he be actually suspended for the first one year

of that probation, along with the other conditions recommended by the hearing judge.

I.

REVIEW OF EVIDENCE

A. Charge of Entering a Partnership With Non-lawyer and Fee Splitting

Initially, we look to the evidence pertaining to the charges that respondent entered into and maintained a partnership with a non-lawyer, Bruce Hickman, that involved the practice of law, and that he shared legal fees with Hickman (count two.) That charge further alleges that the misconduct involved moral turpitude in violation of section 6106.

The record is clear that respondent, admitted to practice in 1963, has, for many years, maintained a high-volume plaintiff's personal injury practice, operated primarily out of an office in Hacienda Heights. Respondent estimated that he had an inventory extensively in the yellow pages of various telephone directories covering areas of San Bernardino, Riverside, and San Gabriel Valley, as well as other areas of

Southern California.

Prior to March 31, 1992, and in that year, respondent received a call from Hickman, whom he had neither met nor heard of at the time of the call. Hickman suggested that they meet and discuss ways in which respondent could improve the effectiveness of his advertising and his case management of "pre-litigation" matters. Pre-litigation matters were defined as those in which respondent had been retained, but no complaint had been filed. Hickman represented himself as having experience as an adjuster for various insurance carriers, and as an independent adjuster with experience in administering and negotiating settlements on personal injury matters.

Following an initial meeting, Hickman reviewed a portion of respondent's client files and prepared a report containing suggestions for improvement in management of the files, and outlining a program for more effective yellow page advertising, covering a wider area at no additional cost. Included in the report was a suggestion that respondent modify and expand his advertising and open new offices with the expectation of an

increase in cases and that respondent engage Hickman to manage the pre-litigation department.

At the time of the initial meeting Hickman maintained staffed offices in Ontario, from which he performed investigations and other services for at least one other attorney.

Although no written agreement was reached between respondent and Hickman, we adopt the hearing judge's findings that an oral agreement was reached between the parties, and we adopt the findings of the hearing judge regarding the terms of that agreement. [4] It was agreed that the pre-litigation files would be moved to Hickman's Ontario office, and be under the management of Hickman. Hickman would be an independent contractor, and would employ his own personnel, some of

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4 The credibility of Hickman was discounted by the hearing judge because of his obvious bias and prejudice against respondent, his repeated accusations of misconduct and criminal acts against respondent far beyond the scope of any question put to him as a witness, continuing in spite of the hearing judge's frequent remonstrations and other efforts to restrain and control the witness, and his obvious disdain for the authority of the hearing court. The hearing judge used Hickman's testimony only when corroborated by other reliable evidence. We agree, and follow suit.

To the extent respondent's testimony was not inconsistent with prior evidence given or created by respondent, the hearing judge found it to be generally reliable; other than that she found his testimony "unreliable." Again we agree, and follow suit.

whom would leave respondent's employ and join Hickman's staff. The litigation files would remain at the Hacienda Heights office and remain under the management of respondent. Compensation to Hickman was to be determined on a formula. Respondent was to pay all of his office expenses from gross attorney's fees earned on pre-litigation cases, which included the cost of advertising, rent, employee's compensation, and other office expenses. The balance was defined as net profit, to be divided between respondent and Hickman. Hickman was to get 25 percent of the net profit of those pre-litigation cases in respondent's office prior to the association with Hickman, and 50 percent of the net profit on those cases where the retainer was signed after Hickman joined the office.

Hickman's duties were agreed to include receiving and responding to new personal injury inquiries in response to telephone calls, meeting with clients either in the office or at the client's' home or other place of convenience, obtaining-client signatures on retainer agreements, and submitting those agreements to respondent's office for acceptance or rejection.

He was to obtain statements, police re ports, and medical reports; conduct field investigations; prepare demand letters on and negotiate settlements with insurance companies to the extent practicable; and administer the-pre-litigation files.

This agreement was made in early April 1992, and the parties operated under it, as will be described, until January 12, 1993.

Hickman recommended and respondent agreed to a new plan of yellow page advertising plus other incidental advertising, all of which became effective incrementally during the term of the relationship between Hickman and respondent. New client calls were received by Hickman or a member of his staff. They would screen the calls for those claims that appeared viable, and set appointments with such potential clients. Hickman or a member of his staff would interview the client regarding the nature of the accident and the extent of injury. If the interviewer determined that the claim was viable, a form retainer agreement was presented to the client, and the member of Hickman's staff would open a file and undertake

such investigation as may be indicated. While the agreement between Hickman and respondent called for the retainer agreement to be submitted to respondent for his approval and signature, the evidence demonstrated that, in fact, Hickman or his employees had a signature stamp in respondent's name and that they frequently stamped the retainer agreements with respondent's signature, without approval of respondent.

Respondent's name was placed on Hickman's offices in Ontario, and over the term of the agreement Hickman leased additional offices in various communities in Southern California. These leases were generally in Hickman's name, although they were held out as the offices of respondent, by signage and telephone answers. Respondent reimbursed Hickman for the rent on these offices as a charge before determining net profit. By virtue of the telephone system suggested by Hickman the area from which the call was made could be identified, and an appointment would be set by an employee of Hickman in an office in or near that area.

Respondent visited these offices infrequently, and some

not at all. He visited Hickman's Ontario office approximately 10 times, the Huntington Beach office less than that, and other offices when required for a deposition or other litigated matter.

During the term of the agreement, pre-litigation cases settled at a rate of as much as 30 to 50 a month, with. little supervision from respondent or his employed attorneys. In practice Hickman's employees evaluated the cases, set a demand value, and negotiated to resolution with the defendants or their insurance carriers. The negotiators would then do a disbursement sheet, including all medical liens and other charges to be paid, and present it to the client for approval. The disbursement sheet and the draft would then be forwarded to respondent's Hacienda Heights office for approval, and the check prepared there. Respondent did not charge clients for incidentals such as telephone, duplication, facsimile transmission, postage, or like items. In addition, in no event were the attorney's fees deducted from any client's recovery to exceed the amount the client received, even if that meant no attorney's fees at all.

Respondent discussed cases with Hickman on almost a daily basis. However, there is clear and convincing evidence that in many cases. the evaluation, negotiating, and settlement were conducted by Hickman or his negotiators, with no supervision by an attorney, with the exception that after acceptance by the client the draft was submitted to respondent or an employee attorney for approval of the disbursement sheet, showing the allocation of the settlement funds, and for the actual disbursement of those funds.

Other than the Harmon matter, discussed post, the record reveals no complaints by clients during the term of the arrangement with Hickman, nor any complaints by medical care providers or other lien claimants. There are no allegations of capping nor improper handling of trust funds.

The agreement between respondent and Hickman did not provide that Hickman was to have an ownership interest in the pre-litigation matters, nor was Hickman to share in losses, should they occur. There was no holding out to the public or others that a partnership had been created between Hickman

and respondent, nor was there any change in the name as the result of the association with Hickman. There was no sharing of prof its or income from cases other than the pre-litigation cases.

During the period of the relationship between respondent and Hickman, April 1992 to January 12, 1993, respondent paid to Hickman approximately $350,000, which included reimbursement for equipment and telephone advertising expenses Hickman had advanced, certain other expenses and salaries for negotiators and office personnel, and compensation to Hickman according to the agreed formula. In January 1993 a dispute arose between Hickman and respondent over a $61,000 check. Respondent delivered to Hickman to reimburse him for yellow page advertising. Early the morning following the dispute Hickman and one of his employees removed from the offices a substantial portion of the pre-litigation files, resulting in the arrest of Hickman.

B. The Harmon Matter

On July 24, 1990, Renee Harmon was involved in a

single car accident while driving a Chrysler automobile rented from General Rent-A-Car. Following the rental, which was to be for an extended period, Harmon complained to General-Rent-A-Car that the steering was periodically malfunctioning. Following an inspection the vehicle was returned to Harmon with a statement that no malfunction could be found. Thereafter, with Harmon driving, the automobile crossed opposing traffic, jumped the curb, and came to rest. She sought treatment for neck and back pain the next day. Harmon filed an accident report with General Rent-A-Car, and although called, the police did not prepare an accident report.

In late July or early August 1990, Harmon retained respondent to handle the personal injury arising from the accident. She advised respondent that she had purchased all of the insurance available at the time of the rental of the Chrysler. On September 21, 1990, on Harmon's behalf, respondent filed a personal injury action against General Rent-A-Car, its parent company, and 20 Does. Respondent

referred Harmon to physicians and advised her that they would file a lien to be paid at the time of her recovery. There was no discussion of responsibility for the medical charges in the event of no-recovery.

Respondent's investigation of the claim included a discussion with representatives of General Rent-A-Car, who advised that they had checked over the Chrysler and found nothing wrong with it, but did not include an independent examination of the vehicle, nor did it include any discovery on that issue, or otherwise. Respondent testified that in September of 1990 he determined that Harmon's case had no merit and that he so advised her, but that he filed the action to protect her claim. Harmon did not recall such a statement.

In July 1991, and within one year of the date of the accident, respondent filed a first amended complaint naming Chrysler Corporation for the first time. Chrysler was not named as a Doe, but rather was named as the result of the filing of new complaint entitled "First Amended Complaint."

In March 1992 respondent made written demand on

General RentA-Car for over $59,000. In May 1992, an identical demand was made on Chrysler. Both denied liability. No further action in the Harmon file is shown until August 1993, when Harmon wrote respondent complaining about the level of service, On September 20, 1993, the first amended complaint was served on Chrysler by certified mail, return receipt requested. On that same day Harmon signed a substitution of attorney substituting Michael Hemming as attorney for Harmon. That substitution was filed September 29 1993 .

In November 1993 Chrysler moved to quash service or to seek discretionary dismissal under Code of Civil Procedure sections 583.210 and 583.420. No opposition to that motion was filed on behalf of Harmon, nor was any appearance made at the hearing, and the court ultimately dismissed the complaint as to Chrysler.

Harmon's testimony regarding communications with respondent was vague, while respondent testified that he personally talked with Harmon on 15 occasions, and with her

brothers on five other occasions. Also, she talked with Hickman's negotiators an undetermined number of times.

C. Agreement in Lieu of Discipline

In April 1990 respondent entered into an agreement in lieu of discipline requiring him to take and pass the CPRE and to complete a course in law office management, all within one year. In testimony, respondent has admitted his failure to comply with either of these provisions of the agreement.

D. The Charge Underlying the Agreement in Lieu of Discipline

In the agreement in lieu of discipline respondent stipulated to the facts and conclusions of law set forth below.

1. Facts

On March 4, 1980, respondent was hired by Wesley F. Jefferson and Mary J. Jefferson (the Jeffersons) to represent them in a foreclosure action concerning their real property and to file a lawsuit on their behalf arising therefrom against several defendants, including Goldenstate Company and Josephine DeFalco.

2. Respondent filed an action on behalf of the Jeffersons in Los Angeles Superior Court entitled Wesley and Mary Jefferson v. Robert P. Davis, et al., case no. EAC 33683. He conducted discovery, including a mandatory settlement conference held on October 4, 1983.

3. Respondent located and served the two defendants who appeared to be most at fault, Goldenstate and DeFalco. On April 7, 1985, the statute of limitations tolled as to the remaining -defendants for failure to prosecute within the five-year limitation, due to respondent's inadvertence. Respondent successfully obtained a default judgment as to Goldenstate and DeFalco, who had, in the meantime, disappeared without responding to the complaint.

4. Respondent also represented the Jeffersons as defendants in an unlawful detainer action known as Lewis v. Jefferson, et al., Pomona Municipal Court case no. 37608.

5. On April 7, 1980, respondent appeared in the Pomona Municipal Court on behalf of his clients, who were not present. He negotiated a stipulation which would allow his

clients to remain in possession of their residence until resolution of the superior court matter described above, on certain conditions. The latter included paying back rent of $475 per month. As the only alternative was immediate eviction, respondent believed his clients would be willing and able to enter such a stipulation.

6. On April 10, 1980, respondent executed a stipulation for judgment on behalf of the Jeffersons without their authorization,but believing they would agree to the terms if fully advised. He thereafter left a message at their home advising them of his action and asking them to contact him if they did not agree to the terms. The Jeffersons were out of town and did not receive or respond to the message.

7. The stipulated judgment was received and filed by the plaintiff's attorney. The Jeffersons were unable to meet the terms of the stipulation and were evicted from their property. Respondent attempted to set aside the judgement, but was unsuccessful.

8. Respondent Is conduct in the unlawful detainer

action did not cause the Jeffersons to be evicted, but, in fact, resulted in some extension of time in what would otherwise have been a summary eviction proceeding.

9. The delay in respondent's handling of the superior court action, and his failure to maintain contact with his clients and to keep them fully advised of their position in the unlawful detainer action, were partially the result of insufficient office controls to assure attention to those client matters.

2. **Conclusions of law**

Respondent admitted that he wilfully violated former rules 6-101(A) (2) and 6-101(2) and sections 6068, subdivision (a) and 6103.

III. *DISCUSSION*

A. The Existence of a Partnership With Hickman

We first consider whether or not either the terms of the oral agreement between respondent and Hickman or their conduct in carrying out that agreement created a partnership consisting of the practice of law as proscribed by current rule 1-310. Absent authority -to--"the contrary we interpret the use

of the word "Partnership" in that rule to mean partnership in the commonly understood definition as it exists in the civil law.

Under the Uniform Partnership Act, specifically section 15006 of the Corporations Code, "A partnership is an association of two or more persons to carry on as co-owners a business for a profit." Section 15007, subdivision (3) of that same code states that sharing of gross returns does not, of itself, establish a partnership; while subdivision (4) provides in effect that receipt of a share of profits in a business is prima facie evidence of partnership, except, inter alia, where the share of profits was received as wages of an employee. (See also Brockman v. Lane, (1951) 103 Cal.App.2d 802, 805; 9 Witkin, Summary of Cal. Law (9th ed. (1989) Partnership, § 23, pp. 422, 423.)

The record is barren of evidence that Hickman had any ownership interest in any of the assets of respondent's law firm, including additions to equipment that were purchased as a result of the relationship. Respondent either paid for or reimbursed Hickman for additional computers, phone

equipment, and other capital items. There is no evidence that Hickman had any ownership interest in these assets, either directly or as a partner. Further, the files were respondent's and the client's. In spite of Hickman's removal of the files at the termination of the relationship, it is clear that they were the files of respondent.

Hickman, although sharing in the profits from a portion of respondent's practice, had no obligation to pay any portion of the firm's liabilities, contingent or actual.

Hickman, in his testimony, repeatedly referred to himself as the partner of respondent, whether the question related to the relation of the parties nor not. However, there is no evidence that he ever referred to himself as a partner during the term of the relationship. Nor is there any evidence that the parties ever held themselves out as partners, either to clients or others Respondent testified that the sole purpose of the shared ne profits was to create a compensation plan that would fairly compensate Hickman, and create an incentive for productive work from Hickman and his staff. Hickman had no access to

the general or trust accounts of respondent, nor did respondent share in the proceeds of any activity of Hickman, other than in relation to the pre-litigation cases.

The State Bar calls our attention to Crawford v. State Bar (1960) 54 Cal.2d 659. There, we note, the court found that the respondent and his father, a disbarred lawyer, adopted a firm name of Crawford & Crawford, held themselves out as partners, maintained a single general account into which were deposited the proceeds of the law practice and the disbarred father's "tax consulting" business, all of which was conducted out of a single office. There was no separate accounting of income and expenses, and the court found that not only did they hold themselves out as partners, they considered themselves as partners.

In the matter before us none of the elements found by the court in Crawford is present. Hickman's testimony appears to be the first representation to or by anyone that a partnership existed. As we have indicated, Hickman's testimony in this regard is neither confirmed nor believable.

In the judgment of this court there is not clear and convincing evidence that respondent entered into a partnership with Hickman, and we reverse the finding of culpability in the charge of violating current rule 1-310.

B. The Sharing of Fees

We next look to the charge of violation of current rule 1320(A) (prohibiting a lawyer from directly or indirectly sharing fees with a non-lawyer) . Respondent freely acknowledges the terms of the compensation plan for Hickman, but argues that such a plan does not violate current rule 1-320(A), or any other rule of professional conduct. We disagree.

The pre-litigation cases, as defined by the parties, were delivered to Hickman for his supervision and administration. The control of these cases by respondent or his attorney staff, under the terms of the agreement or as carried out in practice as found by the hearing judge, was, at best, minimal. We agree. We need not decide whether the compensation plan for Hickman would have been proper had respondent or his

attorney staff remained in control of the pre-litigation clients and maintained the files under their direct supervision, for, in fact, Hickman and his staff, with little or no control, were settling 30 to 50 cases a month; evaluating whether to accept clients in respondent's name, frequently without review by an attorney; setting values on clients' claim,-4 negctiating with insurance companies and settling those claims, frequently without any attorney input; and, cn occasion, even filing lawsuits to prevent the running of the statute of limitations without attorney control. The prelitigation files were transferred to a separate facility at which there was no resident lawyer, only periodic visits by ar attorney member of respondent's staff. Hickman's employees were receiving calls from over 40 different telephone lines md evaluating the claims with almost no attorney supervisio. For this Hickman received a percentage of the net fees on the pre-litigation cases he handled.

In In the Matter of Jones (Revew Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, this court vas confronted with an

almost identical agreement for the compensation of a non-attorney. There the agreement provided that half of all attorney fees collected would go to office upkeep and overhead, one-quarter would go to respondent lawyer, and one-quarter would go to the non-lawyer. (Id. at p. 416.) We held that respondent was culpable of dividing fees with a non-lawyer. There, the decision was based on former rule 3-102 (A). There is no material difference between that former rule and current rule 1-320(A) for our purposes.

Respondent argues that there are marked differences between the instant matter and Jones in that in Jones there was a clear and deliberate effort to create a partnership, and that in this matter respondent maintained control of all of the pre-litigation cases, and that all disbursements were properly made from respondent's trust account under respondent's supervision.

As we have pointed out, we do not agree that, in fact, respondent maintained control over his pre-litigation cases, but rather affirm the hearing judge's finding that the control had

been substantially abdicated to Hickman. In our previous section we have determined that there was no partnership. While that may bear on the degree of discipline, it has little bearing on the issue of culpability regarding sharing fees with a non-lawyer. Respondent did maintain control over the disbursement of clients' funds received in settlement, which is a significant factor, but that alone does not demonstrate suf f icient control to avoid a showing of sharing fees with a non-lawyer in violation of the current rules.

As pointed out by the Supreme Court, the fundamental concern addressed by the prohibition against fee-splitting with a nonlawyer is the risk posed by the possibility of control by non-lawyers more interested in personal profit than the client's welfare. (In re Arnoff (1978) 22 Cal.3d 740, 748, fn. 4; Grassman v. State Bar (1976) 18 Cal. 3d. 125, 132.

The issue of fee-splitting was also presented in In the Matter of Nelson (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, along with issues of forming a partnership with a non-lawyer and capping. While we have not found a

partnership, and there is no evidence of capping, Nelson remains instructive. In a situation in which Nelson exercised at least some control over the activities of the non-lawyer, this court found that he violated the prohibition against sharing fees with a non-lawyer.

We conclude that respondent is culpable of sharing fees with a non-attorney in violation of current rule 1-320(A).

C. The Issue of Moral Turpitude

The State Bar has charged respondent with commission of acts of moral turpitude under section 6106 regarding his relationship with Hickman. To properly evaluate this charge we must look to the acts shown by the record and consider not only culpability, but also any acts shown by the record that would constitute aggravation. Although not charged, the record is reviewed to determine if respondent is culpable of aiding a person or entity in the practice of law in violation of current rule 1-300 (A) . That rule provides, "A [lawyer] shall not aid any person or entity in the unauthorized practice of law."

As we have set forth, ante, the control of the pre-litigation cases by respondent or his attorney staff was minimal. The prelitigation cases were delivered to Hickman for his supervision and administration at a location away from respondent's principal office. Hickman and his staff were accepting clients in the name of respondent and negotiating and settling cases with little or no attorney control. These settlements were at a rate of 30 to SO cases a month; and bonuses were paid by Hickman to his employees for settlement of these cases, demonstrating a concern for profit by Hickman and his employees rather than a concern for the individual client. (Cf. In re Arnoff, sut)ra, 22 Cal.3d. 740, 748, fn. 4.)

Respondent's name stamp was used by Hickman and his employees in sending out demand letters, correspondence with clients, and, on occasion, even complaints filed on behalf of clients. There was little or no contact between respondent and his attorney staff and the pre-litigation clients, as a general rule. The evaluation of the claim was done almost exclusively by Hickman, or his "negotiators," although there were regular

conferences between Hickman and respondent. The madority of meetings with prelitigation clients was done on premises without an attorney in regular attendance, although there was generally telephonic advice available when requested by a negotiator.

We conclude that in totality the agreement as carried out between respondent and Hickman created a situation where Hickman was, in fact, practicing law. In this respect, the conduct of Hickman was analogous to the conduct of the disbarred father, Howard, in Crawford v. State Bar, supra, 54 Cal.2d 659. There Howard gave advice on a mining claim, but a fee was charged by the firm. The court noted "Although Howard's services might lawfully have been performed by title companies, insurance companies, brokers, and other laymen, it does not follow that when they are rendered by an attorney, or in his office, they do not involve the practice of law. People call on lawyers for services that might otherwise be obtained from laymen because they expect and are entitled to legal counsel. Attorneys must conform to professional standards in

whatever capacity they are acting in a particular matter. (Citations.]" (Id. at pp. 667-668)

In the matter before us the clients engaged the services of respondent. They expected and were entitled to have the services of an attorney in evaluating and settling their personal injury claims. Instead, they got the services of an adjuster and his negotiators, housed in offices bearing respondent's name, with phones answered in respondent's name and correspondence and negotiations conducted in respondent's name, with little or no input from respondent. We conclude that respondent aided Hickman in the practice of law in violation of current rule 1-300 (A) Since not charged, that violation will be considered in aggravation and considered in making a determination of whether respondent is culpable of moral turpitude under section 6106.

When the totality of respondent's conduct is considered in his relationship with Hickman and Hickman's employees, we are confronted with respondent moving a substantial portion of his practice away from his principal office, and with few

remaining controls delivering it to the administration and supervision of a non-lawyer, Hickman.

There are no ethical concerns raised in connection with respondent's advertising, nor with the screening of potential client calls. The volume of respondent, s practice does not present ethical questions, provided that each of the steps that involve the practice of law either are performed by a lawyer or are so immediately under a lawyer's supervision as to not run afoul of the underlying purpose of current rule 1-300 (A) or sections 6125 and 6126.

Here, a lawyer with almost 30 years of practice, primarily in the personal injury field, entered into an agreement that we have found to constitute fee-splitting, as well as conduct that aided a non-lawyer in the practice of law. The scheme as carried into effect clearly created the illusion that the various new offices of respondent were, in fact, law offices staffed by lawyers to whom clients could come to resolve their personal injury problems. In fact, they were obtaining a lay negotiating service that, in many obvious respects, was practicing law.

This operation continued in effect for some nine months, accelerating in volume on a monthly basis. In spite of this increase in volume there is no evidence of increased supervision by attorneys, and, in fact, as the volume increased, the supervision by attorneys on individual cases decreased, even as the number of Hickman's employees increased.

In In the Matter of Jones, supra, 2 Cal. State Bar Ct. Rptr. 411, the misconduct was found to involve moral turpitude where the respondent set up a venture with a non-lawyer. In that matter the respondent had only practiced law for two years, and the court noted that he ignored the "basic precepts of attorney professional responsibility....." (Id. at p. 419.) In this matter, we less egregious conduct by an experienced attorney who, we must assume, had a full command of the "basic precepts of attorney professional responsibility."

Even though respondent's misconduct was less egregious than Jones's misconduct, it was committed by an attorney, who, with the slightest bit of research, would have been made fully acquainted with the proscription on sharing

fees, or aiding a non-lawyer in the practice of-law. This plan continued for nine months.

Although respondent testified that the retainer agreements signed by the client were to be delivered to him for approval or rejection, the evidence is clear that in many, if not nearly all cases, Hickman or his negotiators were the ones who accepted the clients without further approval. Respondent knew that Hickman and the negotiators were settling cases about which he knew little or nothing.

During oral argument respondent called our attention to the Insurance Adjuster's Act, Insurance Code section 14000 et seq., arguing that the activities of Hickman and his employees would have been authorized under that act. we note that no evidence was introduced showing or suggesting that either Hickman or any of his employees were licensed under that act. Insurance Code section 14002 prohibits an insurance adjuster from engaging in the practice of law unless the adjuster is an active member of the State Bar of California, while Insurance Code section 15002 imposes a similar

restriction on public insurance adjusters. We further note that a public insurance adjuster includes one who, for compensation, assists an insured in negotiating for or effecting a claim on behalf of an insured. (Ins. Code, § 15007.)

Respondent seeks to identify his duties in pre-litigation cases as no more that those of an insurance adjuster. The analogy is not apt. Respondent is a lawyer, and clients contact his office because of and in reliance on that fact. When retained, respondent must competently evaluate the client's claim and represent the client appropriately. While insurance on the part of a prospective defendant may affect the value of the claim, it is not strictly a claim against that defendant's insurance carrier, but against that defendant, regardless of insurance. Also, in making such an assertion, respondent completely ignores the language of Crawford v. State Bar, supra, 54 Cal.2d. 659, 667-668, quoted ante. The argument places in doubt respondent's understanding of his fundamental duties as a lawyer in representing clients.

Respondent knew that he was abdicating his

responsibilities as an attorney and acted purposefully in allowing Hickman to engage in activities which constituted the practice of law. Accordingly, respondent's acts involved moral turpitude in violation of section 6 1 0 6.

D. The Harmon Matters

1. Charge of violation of 6068, subdivision (m)

The hearing judge found a lack of clear and convincing evidence that respondent was culpable of violating section 6068, subdivision (m) (imposing a duty on attorneys to respond promptly to reasonable status inquires of clients) Our independent review of the record leads us to a like finding and we affirm the hearing judge's decision as that count.

2. Charge of violation of current rule 3-110(A)

Current rule 3-110(A) provides that an attorney shall not intentionally, or with reckless disregard or repeatedly fail to perform legal services competently.

As the record reveals and the hearing judge found, respondent failed to make claim against the medical coverage that Harmon represented that she had purchased, to properly

investigate the condition of the Chrysler automobile following the incident, and to conduct discovery regarding Harmon's claim. on the other hand, respondent filed a timely action, caused it to be served on the car rental agency, and filed a timely amended complaint naming Chrysler Corporation, but made ineffective effort to have it served. In addition, respondent's office had made settlement demands on both the car rental agency and Chrysler Corporation.

While respondent did undertake some action on behalf of Harmon, he failed to make claim on her purported insurance, he took no action to prosecute Harmon's case other than file the complaint and the first amended complaint, he caused no independent investigation to be made, he performed no discovery, and he failed to cause service to made in such a manner to prevent a motion for discretionary dismissal.

Respondent argues that as early as September 1990 he concluded that Harmon' s case was not meritorious in spite of that he remained counsel of record and performed some services until September 1993. Following our de novo review

we conclude that respondent is culpable of violating current rule 3-110(A).

3. Charge of violation of current rule 3-700(A)

Current rule 3-700(A)(2) prohibits a member from withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to the client. Here respondent withdrew following service on Chrysler Corporation, and well before any motion for discretionary dismissal or to quash service was brought by Chrysler. Chrysler was served on September 20, 1993. On that same day Harmon signed a substitution of attorney replacing respondent with Hemming as attorney for Harmon. That substitution was filed nine days later. The Chrysler motion to dismiss or quash service was not made until November and was served on Hemming. The fact that respondent's successor counsel made no effort to resist the discretionary dismissal motion cannot be attributed to respondent. While respondent's failure to act more promptly may have inspired the motion for dismissal, we have dealt with such conduct in the prior section of this opinion. We determine

that there is not clear and convincing evidence that his withdrawal, under circumstances giving successor counsel ample time to resist the motion for discretionary dismissal, resulted in a violation of current rule 3-700(A) (2), and we reverse the hearing judge's determination on that issue.

IV. DISCIPLINE

While we have reversed the findings of culpability in part of the Harmon matter and as to entering into a partnership agreement with Hickman, a non-lawyer, respondent remains culpable of sharing fees with a non-lawyer in several hundred cases, extending over a period of some nine months. In aggravation respondent has been found to have aided a non-lawyer to engage in the practice of law, again, covering several hundred cases and for a period of nine months.

In addition, these findings of culpability and aggravation are measured in a situation in which respondent has failed to comply with a prior agreement in lieu of discipline. We therefore add to the balance that violation by

respondent of section 6068, subdivision (1) (requiring a lawyer to keep all agreements made in lieu of discipline).

Still further, we look to respondents admission of violation of former rule 6-101(A)(2) (requiring an attorney not to intentionally, recklessly or repeatedly fail to perform competently), former rule 6-101 (2) (requiring reasonable diligence to accomplish the purpose for an attorney was employed) and section 6068, subdivision (a) (requiring an attorney to support the federal and state laws and constitutions) and section 6103 (prohibiting disobedience to an order of court that attorney ought, in good faith, to obey). Each of the admissions to these charges followed respondent's stipulation of fact arising out of the 1985 disciplinary charge. We weigh these admissions of culpability along with the admitted facts in determining discipline.

We consider in recommending discipline, among other things, the fact that the conduct in sharing fees with a non-lawyer appears to go directly to the heart of the reason for current rule 1-320(A) as expressed by the Supreme Court in

In re Arneff, supra, 22 Cal.3d 740, 748, fn. 4. The conduct of Hickman and his negotiators clearly posed the risk of non-lawyers, elevating the personal profit motive above the interests of the clients. This risk was greatly exacerbated by respondent's deliberately creating a situation where Hickman and his negotiators were, in fact, practicing law. We also consider the volume of cases handled by Hickman and his employees, the dollar amount involved, and the length of time it continued.

In further aggravation, we note that respondent, so far as the record shows, has made no effort to take the professional responsibility examination, required by his agreement in lieu of discipline.

We consider in mitigation, as found by the hearing judge, that respondent presented evidence of good moral character and reputation in the community from a broad cross section of the community, including lawyers. Each of the witnesses had known respondent for many years, each knew of the nature of the charges against him, and each testified to

his good moral character.

We also consider the evidence of community service by respondent. This shows that for many years he has participated in community activities and lent assistance and support to them. We further note, in mitigation, respondent's evidence of the revision in the management of his offices. This includes far greater participation by respondent in each case, whether in litigation or otherwise, and commendable evidence of management systems to control a high-volume law office.

The State Bar has recommended that respondent be suspended for a period of three years, stayed, and that he be placed on probation for three years on the condition, among others, that he be actually suspended for a period of one year. This is the actual suspension recommended by the hearing judge. The respondent, on the other hand, argues in connection with discipline only that one year of actual suspension is far too harsh.

In looking to the cases dealing with discipline for the

type of culpability found here, we find no case identical, but several that are helpful. In In the Matter of Scapa and Brown (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, respondents set up a branch office in which non-lawyer independent contractors were responsible for signing up clients and were paid in cash based on the value of the client's case. In that case, there was also illegal solicitation by the non-lawyers, and respondents were found culpable of charging unconscionable fees. There, respondents were actually suspended for 18 months.

In In the Matter of Jones, supra, 2 Cal. State Bar Ct. Rptr. 411, this court found that respondent had entered into a partnership with a non-lawyer, divided fees with a non-lawyer, and aided a non-lawyer in the practice of law. There was harm to clients, and upon discovering that non-lawyers were using cappers to obtain clients in respondent's name, respondent took no decisive action. The actual suspension imposed was two years.

In In re Arnoff, supra, 22 Cal.3d 740, there was a fee-

splitting agreement between Arnoff and a non-lawyer. This was exacerbated by the layman paying kickbacks to doctors and others, although it was not clear that Arnoff knew of the kickbacks. Further, in that matter the layman maintained the books and records of the office, and disbursements were made without the control of Arnoff. There-was strong evidence that fraudulent medical reports were used, and there was a question as to whether Arnoff knew of that fraud. In that matter Arnoff was actually suspended for a period of two years.

In In the Matter of Nelson, supra, 1 Cal. State Bar Ct. Rptr. 178, it was stipulated that respondent entered a partnership for the practice of law with a non-lawyer, divided fees with the nonlawyer, and used the non-lawyer as a capper. There was no evidence of harm to clients. In addition, cases were transferred to another lawyer who settled cases without client authority and misappropriated a portion of their settlement proceeds. There, the respondent showed mitigation in the form of decisive withdrawal from the misconduct and thorough cooperation with the State Bar. In addition, five

years had elapsed between the misconduct and the hearing. In Nelson respondent received six months actual suspension.

In the matter before us we have no known harm to clients as the result of the relations between respondent and Hickman, although as pointed out in Nelson, "the potential for such harm was great . . . . 11 (Id. at p. 189.)" Looking to 2.3 and 2.6 of the Standards for Attorney Sanctions for Professional Misconduct (Standards) , we note that where moral turpitude is found we look to client harm and the magnitude of the act as it relates to the practice of law in determining the extent of discipline.

We find this case less egregious than the cited cases in that no capping was involved. While no partnership agreement has been found in the instant case, the circumstances of permitting Hickman and his employees to practice law with pre-litigation cases in an enormous volume create substantially the same risk to the public and the administration of justice. We find far less cooperation with the State Bar in this matter than in either Nelson or Jones. Further, in this matter we have

elements that were not present in any of the cited cases. Respondent had practiced law for approximately 29 years when he engaged in the misconduct described.

Respondent has practiced for many years without discipline and is entitled to great weight in mitigation for that factor. However, we are left with an experienced attorney who engaged in serious misconduct, in great volume over an extended period of time.

We also consider serious, respondent's failure to comply with the terms of his agreement in lieu of discipline. We weigh respondent's admitted misconduct in the matters leading to the agreement in lieu of discipline.

Weighing all of the factors, we conclude that the actual suspension of one year requested by the State Bar and recommended by the hearing judge is appropriate, and we affirm that recommendation.

V.

RECOMMENDATION

It is recommended that respondent be suspended from

the practice of law in the State of California for a period of two years, that execution of this suspension be stayed, and that respondent be placed on probation for two years, on condition that during the first year of probation respondent be actually suspended from the practice of law in the State of California. In addition, we recommend that each of the remaining conditions of probation and other requirements recommended by the hearing judge be imposed, except that the recommendation for costs be amended to provide that costs be awarded to the State Bar pursuant to section 6086-10 and that those costs be payable in accordance with section 6140.7 (as amended effective January 1, 1997). As a further exception, it is recommended that respondent be required to take the Multistate Professional Responsibility Examination in lieu of the California Professional Responsibility Examination.

OBRIEN, P.J.

We concur:

NORIAN, J.

STOVITZ, J.

Case No. 85-0-12550

In the Matter of LAWRENCE C. BRAGG

Hearing Judge: Hon. Ellen R. Peck

Counsel for Parties

For State Bar Of California: Teresa Schmid

Elena Bardellini

Enforcement Department

Office of the Chief Trial Counsel

The State Bar of California

1149 S. Hill Street

Los Angeles, CA 90015

For Respondent: Lawrence C. Bragg, in pro. per.

15454 East Gale Avenue

Hacienda Heights, CA 91745

CERTIFICATE OF SERVICE

[Rule 62 Rules Proc. for State Bar Ct. Proceedings; Code Civ. Proc., 5 1013a(4)]

I am a Deputy Case Coordinator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on the date shown below, I deposited a true copy of the following documents

OPINION ON REVIEW, FILED APRIL 28, 1997.

in a sealed envelope as follows:

[XI by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LAWRENCE C BRAGG ESQ 15454 E GALE AVENUE

HACIENDA HEIGHTS CA 91745

by certified mail, with a return receipt requested, through the United States Postal Service at Los

Angeles, California, addressed as follows:

N/A

(XI by interoffice mail, through a facility regularly maintained by the State Bar of California addressed as follows:

TERESA J SCHMID ESQ ELENA G BARDELLINI ESQ

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on April 28, 1997.

Shemainee C. Carranza

Deputy Case Coordinator

State Bar Court

LAW OFFICES OF LAWRENCE C. BRAGG
A Professional Law Corporation
15454 E. Gale Avenue
Hacienda Heights, Ca. 91745
818-961-0511
Petitioner Attorney ***Pro Se***

SUPREME COURT
FILED
SEPT 16 1997
Robert Wandruff Clerk

DEPUTY

THE SUPREME COURT OF THE

STATE OF CALIFORNIA

Docket No. S062861

In the Matter of

State Bar Court Case No. 85-0-12550

LAWRENCE CRAWFORD BRAGG

Motion for Recusal of Members of California Supreme Court

No. 33302
A Member of the State Bar

Now comes the Petitioner, Lawrence Crawford Bragg, an attorney for thirty four years, and respectfully moves for this Court, and its members, to recuse itself from hearing and

determining whether there is a due process and equal protection violation involved in the selection, hiring, housing, training, and employment of the appointees of this Court to the State Bar of California, which is the prosecuting party in proceedings, which acts deny to each accused attorney a fair and impartial adjudicator.

Petitioner requests this Court forbear hearing or determining the submitted Petition and issue a ruling first on this motion for recusal, so as to provide the Petitioner with a minimum thereafter of two weeks to request, if this Court declines to recuse itself or assign a Court of Appeals panel, a federal court hear and determine whether this Court's role for a party to decisions concerning the admission and discipline of attorneys offends the principles of due process of law concerning a fair and impartial adjudicator.

This motion is based on this Motion, the attached Points and Authorities, the files, and the records, and judicial notice of the State Bar Court statutes and Rules of Court.

RESPECTFULLY SUBMITTED,

Dated: September 15, 1997

LAWRENCE C. BRAGG
Petitioner Attorney ***Pro Se***

LAW OFFICES OF LAWRENCE C. BRAGG
A Professional Law Corporation
15454 E. Gale Avenue
Hacienda Heights, Ca. 91745

818-961-0511

Petitioner Attorney ***Pro Se***

THE SUPREME COURT OF THE STATE OF

CALIFORNIA

Docket No. S062861

In the Matter of

State Bar Court Case No. 85-0-12550

LAWRENCE CRAWFORD BRAGG

Points and Authorities in Support of Motion for Recusal of Members of California Supreme Court

No. 33302
A Member of the State Bar

I.

Facts

The issue presented is whether the California Supreme Court, or its members, should or may entertain deliberations or decision-making concerning a party appearing before it when this Court, and all of its members, have appointed fifteen employees to that party and assumed a fiduciary role of overseeing its appointees to that party.

References to "section(s)" refers to sections of the California Business and Professions Code. References to the "State Bar" refers to the State Bar of California.

I. The Risk of Bias is Intolerably High when a Court is a Partisan for a Party

When the risk of unfairness is intolerably high, a judge must be recused from a case. **Withrow v. Larkin** 421 U.S. at 58, 95 S. Ct. at 1470. While a judge is obligated to be unswayed by partisan interests, when he occupies a role as a partisan for a party and/ or on the issues presented by a party, he is disqualified to sit on a case as the risk of bias is intolerably high. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a),

(1)(c), 3C(3)(c). This Court appointed nine employees to the State Bar of California in 1989. It appointed a tenth employee in 1994. It appointed five more employees in 1996. Due to a recent resignation of one of its appointees , it is scheduled to imminently appoint a sixteenth employee. Its appointees were and are selected, hired, housed, trained, provided their expenses, staffs, salaries, and facilities and employed by the State Bar of California. The State Bar of California is the prosecuting party in cases concerning professional conduct of attorneys. However, this Court's appointees sit in an advisory administrative adjudicative capacity concerning those same matters while they are also employees of the prosecuting party.[5] This Court reviews the recommendations of discipline of its appointees. Though by law this Court is required to exercise independent and plenary review, in seven years since creation of its appointees, it has

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5 The decision under review asserts that this Court's appointees to the State Bar of California sit in place and in stead of this Court in fulfilling its judicial duties concerning the admission and discipline of attorneys. It asserts it has elevated itself from an administrative arm to this Court, to being this Court itself. Refer Exhibit A:5.

denied review to all accused attorneys. It has assumed review solely to increase discipline in two cases this year. All petitions of accused attorneys have been summarily denied without grounds stated. This Court also removes for cause and oversees its appointees to the State Bar of California. Sections 6086.65, 6079.1, 6079.5, California Rules of Court, Rules 950-962. Its appointees are paid from the private funds of the State Bar of California. The annual base salaries of this Court's appointees total approximately one million dollars. Sums are obtained by the State Bar of California from finding guilt of accused attorneys through the imposition of administrative costs to reimburse the salaries and expenses it must pay this Court's appointees, monetary sanctions of up to $50,000 per attorney for the Client Security Fund of the State Bar of California, and through forced participation in section memberships, schools, classes, examinations the State Bar of California runs for private profit. Sections 6079.1, 6086.65, 6086.10, 6086.13.

The former appointee of this Court, Lise A. Perlman,

the denominated presiding judge of the State Bar's "Court" has stated in **The California Lawyer,** the official monthly publication of the State Bar of California, in its April, 1996 issue, in her article, "Declare Independence," at page 28 that,"Many disciplined attorneys also view the [State Bar's] court with suspicion because of its connection to the State Bar [of California] The bar [State Bar of California] has defended at considerable expense, numerous federal suits challenging the court's constitutionality, and more suits appear likely. The State Bar [of California] defended these challenges by arguing that there was no inappropriate commingling of the executive and adjudicative functions. Then, in 1995, the board [of the State Bar of California] rewrote its long-standing rules to abolish the presiding judge's general supervisory role over all assigned staff, relegating the judges to consultation and "meaningful input" in the administration of the court." This Court's appointees are clearly not independent adjudicators. They are employees of the prosecuting party who must follow its orders in

adjudicating the guilt or innocence of an accused attorney.

A judge who is an active participant in the affairs of a party remains subject to the unconscious leanings of human nature to favor that party in which he actively participates. When a judge personally knows and appoints people to a party, this tempts the judge to favor that party he has already favored with his extrajudicial support. Similar to Judge Ito sitting on an issue concerning statements made by a witness which are critical of his wife, this Court sitting on cases concerning the unconstitutionality of its appointees to a party is just as tempted to feel offended, or as Judge Ito said, "wounded," by the allegations of illegality of what this court and its appointees have done and the extrajudicial role this Court has assumed for and in support of a particular party appearing before it and the disqualification of its appointees to fulfill the role this Court gave them when its appointees are selected, hired, and employed by a party. That is why "active participation in the affairs of a party" is defined as a judge possessing a"financial interest" in a party or proceedings as

defined by the California and American Bar Association Judicial Codes of Conduct requiring a judge's recusal for cause. American and California Bar Association Judicial Codes of Conduct, Canons 3 C(1)(c) and 3C(3)(c). Canon 3 C(3)(c) of the California and American Bar Association Judicial Codes of Conduct requires a judge to disqualify himself when "he has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

Active participation in the affairs of a party is a financial interest in a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). This makes sense. A judge who actively participates in a party's affairs, in making a judgement for it, will be saving it monies or awarding it monies. In this Court's case, it awards the State Bar party monies by awarding costs to the State Bar, which are, in fact, the salaries and benefits of its appointees to the State Bar party and those of their co-

employees, plus ordering probation terms which obligates the other party to pay for other programs administered by the party to which this Court has appointed employees, some of which this Court's appointees directly participate in or oversee, such as the Client Security Fund of the State Bar of California. Sections 6079.1, 6086.65, 6140.5, 6086.10(a)(b)(c).

As the Judicial Codes of Conduct emphasize, "financial interest" in a party is not limited to a judge putting money in his own pocket. It includes giving, granting, awarding judgments to a party with whom the judge actively participates, since it is assumed that every judgment carries with it a financial saving, cost, or aspect to the party in whose favor a judgment is awarded. That is not an incorrect assumption, since this Court's orders denying all petitions of all accuseds always order monies paid to the State Bar party which include recoupment of the salaries and benefits of this Court's nine appointees to their State Bar employer. 3,091 attorneys have been summarily disbarred and suspended by

this Court since January 1, 1989 with all orders ordering them to pay this Court's appointees' salaries and benefits as claimed "Costs." Exhibit A.

A. Active Participation in the Affairs of the Prosecuting Party disqualifies the California Supreme Court and its members

Pursuant to **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972), "the court dealt with the issue of whether trial before a mayor who also had executive responsibilities for the village budget and finances was consistent with the guarantees of the due process clause when the revenue produced from the mayor's court provided a substantial portion of village funds. The court once noted that in **Tumey [v. Ohio** 273 U.S. at 532, 47 S. Ct. at 444] the fact that the mayor.... shared directly in the fees and costs did not define the limits of the principle." 409 U.S.. at 60, 93 S. Ct. at 83. Rather the court reiterated, `the test is whether the mayor's situation is one which `would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might

lead him not to hold the balance nice, clean, and true between the State and the accused....Id, quoting **Tumey v. Ohio**, supra, 273 U.S. at 532, 47 S. Ct. at 444. The court held that such "possible temptation might exist, even in the absence of a direct, personal pecuniary interest on the part of the adjudicator, when his `executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court.' 409 U.S. at 60, 93 S. Ct. at 83, as presented in **Matter of Ross,** 668 P. 2d. 10989 (1983), at p. 836.

This Court appointing employees to a party is an executive role it has assumed for a party. This Court overseeing its appointees to a party is another executive role this Court has assumed for a party. With two executive roles this Court has assumed for the State Bar party in full operation since 1989, its occupancy of a judicial role for that party since 1989 appears to be more disqualifying that the executive role the judge occupied in **Tumey, supra,** and **Ward, supra**. It is wearing three hats at the same time- two

executive roles for a party and a judicial role in direct conflict thereto.

The United States Supreme Court in **Liljeberg v. Health Services Acquisition Corp.** 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855(1988) held that a judge who was on the Board of a College, even though the College was not a party to the action, when the College was a financial beneficiary of the judgement, was disqualified under the objective reasonable person test of recusal which applies to the disqualification of both state and federal judges. See **Aetna Life Insurance Co. v. La Voie** 475 U.S. 813, 89 L.Ed. 823, 106 S. Ct. 1580 (1986). Thus, even if a financial beneficiary of a judgment is not a party, a judge is disqualified when he has an extrajudicial relationship with a financial beneficiary of its orders. The Judicial Codes have held that an active participant in the affairs of a party is similar to a Board member or director in requiring a judge's disqualification for direct involvement with a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1),

Canons 3C(1)(a), (1)(c), 3C(3)(c). **Liljeberg, supra**, makes clear that the involvement may be with a financial beneficiary of an order and is not limited to direct involvement with the parties.

Aetna, supra, makes clear that the state standard of recusal used by this Court and cited in **Lebbos v. State Bar of California** 53 Cal.3d. 37, 278 Cal. Rptr. 845, 806 P.2d. 317 (1991), footnote 1, as a rationale for its sitting on over 4,000 cases involving the State Bar, while it has appointed employees to it since 1989, has been overruled by a requirement that the California Supreme Court comply with an objective standard of recusal and not continue to use a subjective standard which permits each justice to determine his or her own bias. In **Aetna, supra,** the United States Supreme Court made clear that a direct, personal, substantial pecuniary interest in a State Supreme Court Justice is not required for a State Supreme Court Justice to be required to recuse himself. As stated in **Aetna, supra**, at 822, "No judge `can be a judge in his own case [or be] permitted to try cases

where he has an interest in the outcome." **In re: Murchison** 349 U.S. 133, 136 (1955).....what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' *Ibid.* None-the-less, a reasonable formulation of the issue is whether the `situation is cne `which would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.' **Ward v. Village of Monroeville,** supra, at 60. " "...Justice must satisfy the appearance of Justice." **Aetna, supra,** p. 825, quoting **In re: Murchison** 349 U.S. at 136.

The United States Supreme Court has stated that the process is to"examine what factors might constitute an interest in the outcome of this case that would bear on recusal. " **Aetna, supra,** p. 822. On information and belief, members of this Court in 1988 met with officials and employees of the prosecuting party, the State Bar of California, without disclosure to any accuseds. On information and belief, members of this Court from 1988 through to the present have met with and had conversations

with officials and employees of the prosecuting party, the State Bar of California, to which no accused has been privy and to which this Court has made no disclosure to any accused. Those meetings and conversations concerned a commitment by the members of this Court to aid and assist the State Bar prosecuting party in controlling and taking over attorney discipline from this Court so as to permit this Court to control its workload. No accused was ever apprized of any of these conversations, commitments, or *ex parte* collaborations by and between the members of this Court and a party. In 1988 and 1989, the members of this Court had *ex parte* communications with the State Bar party which it never disclosed to any accused. Those communications concerned requests from the prosecuting party for this Court to appoint employees to it to be "judges" to its State Bar Court to replace this Court issuing disbarment or suspension orders on the state's attorneys. This Court, as recent publicity indicates, continues to have *ex parte* communications and conversations and meetings with the prosecuting party

without any disclosure or notice to any accused. On information and belief, for over seven years this Court has had *ex parte* communications with the prosecuting party concerning the merits of the constitutional issues presented by accuseds concerning the recusal of this Court and of the State Bar and its "judges" appointed by this court and concerning the unconstitutionality of the State Bar Court attorney licensing system. This Court superseded the state statute permitting access to accuseds to the State Court of Appeals concerning cases concerning the State Bar party in 1990. It did so by passing rules of court, which were recommended *ex parte* by the prosecuting party to this Court and which were prohibited public comment, which prohibit access to any other court. California Rules of Court, Rules 950-962, section 6082. The passage of such a rule, when this Court appointed employees to the State Bar prosecuting party in 1989, permits this Court to review its appointees' recommendations against each accused and award the employer of its appointees' monies from the takings of each

accused's license to practice law. On information and belief, recently this Court met with and/ or communicated *ex parte* with officials of the State Bar party about what to do with all of the federal law suits questioning the disqualification of this Court and its appointees to the State Bar party as partisans for the State Bar party and as co-defendants in those law suits how to prevent removal of this Court and its appointees from siting on attorney licensing cases. This mutual collaboration with a party resulted in this Court appointing a Committee to recommend appointees to this Court, which does not alter any constitutional issue. California Rules of Court, Rule 962. These facts present an appearance of impropriety in the mind of the average citizen concerning this Court's participation in cases involving the State Bar of California. These objective facts raise a sufficient doubt in the mind of the average person on the street as to whether this Court could be impartial concerning an accused's case to compel this Court's recusal for cause for cases concerning the State Bar of California. Section 6082, California Rules of Court, Rules 950-962.

That this court changed, at the *ex parte* request of the State Bar and without allowing public comment, from *de novo* review of recommendations of the State Bar to no review permitted to an accused in this Court's discretion, which discretion it has exercised against over 3,091 accused attorneys since it appointed employees to the State Bar in 1989, is an additional indicia to the average person on the street that this Court is a biased adjudicator for the State Bar prosecuting party. Ca. Rules of Court, Rules 952, 954.

Appointing employees to a prosecuting party to be its Judges from a list exclusively provided by a prosecuting party is an additional indicia of bias for the prosecuting party which is unmistakable and which act was declared unconstitutional in a similar fact situation in **Wall v. American Optometric Association** 379 F. Supp. 175, affirmed 95 S. Ct. 166 (N.D. Ga. 1974), in which the United States Supreme Court denied certiorari.

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II. The Risk of Bias is Intolerably High when a Court is a Partisan on the Issues

While a State Supreme Court Justice had on-going litigation with an insurance company, which was not a party to the judgment, the judgment involved application of a new issue concerning bad faith insurance practices, which "had the clear and immediate effect of enhancing both the legal status and the settlement value of his own case." This compelled the United States Supreme Court to void the judgment and order of the State Supreme Court. **Aetna, supra**, p. 824. When a judge sat as a one-man Grand jury and then sat on whether he would enforce his own orders by way of contempt, he was disqualified as a partisan on his own issues. He wore two hats at the same time-one partisan and one adjudicative. **In re: Murchison, supra.** This Court created a State Bar Court with a privately financed party. It did so by appointing its judges. It occupies an executive role for a party. It appoints, reappoints, removes, and oversees its appointee Judges to a party's claimed Court. Now the issue is whether the

appointees of this Court are disqualified to sit as judges because they are selected, hired, and employed by a party. This Court did it. This Court did it in an extrajudicial role it assumed for a party. It is this Court that created personally the alleged unconstitutionality the petitioner challenges.

Since this Court, similar to the Board in **Gibson v. Berryhill** 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d. 488 (1973), one of the Commissioner on a Board in **Yamaha Motor Corp. , U.S.A. v. Riney** 21 F.3d 793 (Eighth Cir. 1994), and the entire Commission in **United Church Etc. v. Medical Center Com'n** 689 F. 2d. 693 (Seventh Cir.1982), is a partisan about the issue of its appointees to a party sitting as judges, it is disqualified to hear or entertain the Petitioner's challenge that its appointees to a party are constitutionally precluded as partisans for a party from being judges.

Conclusion

Since this court has had an opportunity to recuse itself in this situation for over seven years, and has summarily denied all petitions of all accuseds and, on information and

belief, has refused to rule on about five hundred recusal motions [6] raising these identical issues presented by accuseds, and this Court's duty appears to be to forbear participating in decision-making concerning whether its appointees to a party are disqualified to sit in the positions this Court appointed them to, Petitioner requests that this Court issue a ruling on its recusal first. This will permit the Petitioner access to the federal court to hear and determine whether this Court may, consistent with the fifth and fourteenth amendment due process and equal protection clauses of the United States Constitution, hear and determine whether its appointees are constitutionally precluded from occupying the positions to which this Court appointed them to, or whether by reason of conflict of interest and appearance of impropriety, this Court

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6 On information and belief, this Petitioner is informed that the following attorneys have requested recusal of this Court on the identical grounds, and this Court has summarily denied each Petition raising the issues: Lebbos, supra. Attorneys Barry Ammon, Harold Rauch, John Rakus, Robert Philip McNamee, Ronald Berki, Raymond Dunn, Gary Coutin, John B. Gunn, G.G. Baumen, Evangelin Marie Miller, Jessie Ho, Richard Travis, Stuart Hirsh, Harold Perry, Howard Johnson, Lawrence Bragg, Edmundo Espinoza, Howard Johnson, and Peter Acuna.

is foreclosed from such consideration and must forbear from deciding the legality of its appointees to the prosecuting party.

RESPECTFULLY SUBMITTED,

Dated: September 15, 1997

LAWRENCE CRAWFORD BRAGG
Petitioner Attorney ***Pro Se***

Verification

I have read the foregoing Points and Authorities in support of Motion for Recusal of members of the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 15th day of September, 1997 at Hacienda Heights, California.

LAWRENCE CRAWFORD BRAGG
Petitioner Attorney ***Pro Se***

OFFICE OF TRIAL COUNSEL OFFICE OF TRIALS
THE STATE BAR OF CALIFORNIA
ROBERTA M. YANGTERESA J. SCHMID
ELENA BARDELLINI
1149 South Hill Street
Los Angeles, CA 90015-2299
Telephone: (213) 765-1000

SEP 0 7 1994

THE STATE BAR COURT

OF THE STATE BAR OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

Case Nos. 85-0-12550
93-0 -17012

93-0-18322

LAWRENCE CRAWFORD BRAGG,

NOTICE TO
SHOW CAUSE

No. 33302
A Member of the State Bar

TO: LAWRENCE CRAWFORD BRAGG, Respondent herein:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES,

INCLUDING EXTENSIONS, YOU MAYBE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNTIL AN ANSWER IS FILED.

You were admitted to the practice of law in the State of California on January 10, 1963. Pursuant to rule 501, Transitional Rules of Procedure of the State Bar of California, reasonable cause has been found to conduct a formal disciplinary hearing, commencing at a time and place to be fixed by the State Bar Court (NOTICE OF TIME AND PLACE OF HEARING WILL BE MAILED TO YOU BY THE STATE BAR COURT CLERK'S OFFICE), by reason of the following:

COUNT ONE

Case No.: 93-0-17012

1. In or about July, 1990, you were employed by Renee Harmon (hereinafter "Harmon") to represent her interest in a personal injury matter. A written fee agreement was entered into in this matter.

2. On or about September 21, 1990, you caused a lawsuit to be filed on Ms. Harmon's behalf entitled Renee Harmon v. AGSY, Inc. et al., Case No. KC 002027 in the Los Angeles County Superior Court. On or about July 22, 1991, you caused a First Amended Complaint, entitled Renee Harmon v. Chrysler Corp. et. al. to be filed.

3. Between July, 1990 and August 1993, Harmon called your office on at least three occasions. You never returned her phone calls. During that time period, the only communication she received from you was a letter dated March 31, 1992 advising her that her file was being transferred from your Hacienda Heights office to your new Ontario office. You advised her that your employee, Bruce Hickman would assist her with any questions. On August 21, 1993, Harmon wrote you a letter and requested that you inform her of the status of her case. She received no response from you.

4. In or about September of 1993, you were substituted out of the lawsuit by Harmon. The Law Offices of Michael J. Hemming was substituted in your place.

5. In or about December of 1993, The Los Angeles Superior court dismissed Defendant Chrysler from Harmon v.AGSY, INC., et-al because of a failure to serve Defendant Chrysler within two years of the commencement of the action.

6. You failed to perform the services for which you had been hired. You failed to communicate with your client, or respond to her reasonable status inquiries. You withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of your client.

You committed the above-described acts in wilful violation of your oath and duties as an attorney under Rules of Professional Conduct 3-110(A) and 3-700(A)(2) and Business and Professions Code section 6068(m).

COUNT TWO

Case No. 93-0-18322

1. In or about April, 1992, you hired Bruce Hickman (hereinafter "Hickman") to assist you with your office management problems. Bruce Hickman was not an attorney licensed to' practice law in the state of California.

2. You operated out of an office in Hacienda Heights, and Hickman operated out of an office that he rented from an attorney named Arthur Ackerman (hereinafter "Ackerman") in Ontario. Hickman also did consulting work with Ackerman. You agreed to share office expenses with Ackerman since you had clients in Ontario as well as Hacienda Heights. You did work out of both offices.

3. You entered into an arrangement with Hickman whereby Hickman was paid a percentage of the income from all of the cases settled by Hickman, after deducting the office expenses of each of the offices.

4. From April 1992 to in or about January, 1993, you entered into and maintained a partnership with a non-attorney, and you shared legal fees with a non-attorney.

You committed the above-described acts in wilful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6106, and Rules of Professional Conduct 1-310 and 1-320.

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COUNT THREE

Case No. 85-0-12550

1. On or about April 26, 1990, you executed a Stipulation as to Facts and Agreement in Lieu of Discipline Pursuant to Business and Professions Code Section 6068(l) (hereinafter the "Stipulation") with the Office of Trial Counsel of the State Bar of California. A true and correct copy of the Stipulation is attached hereto as "Exhibit l" and incorporated herein by this reference.

2. In the Stipulation, you stipulated to violations of Sections 6068(a) and 6103 of the California Business and Professions Code and to violations of former Rules 6-101(A)(2) and 6-101(2) of the former Rules of Professional Conduct with regard to your representation of your clients, Wesley and Mary Jefferson, in a foreclosure action and resulting lawsuit and in an unlawful detainer action.

3. In the Stipulation, you agreed to be subject to and to perform certain conditions as follows:

(a) To take and complete an office management

course within one (1) year of the effective date of the stipulation.

(b) To take and pass the Professional Responsibility Examination within one (1) year of the effective date of the Stipulation.

4. You have failed to comply with these conditions of the Stipulation.

You committed the above-described acts in wilful violation of your oaths and duties as an attorney under disciplinary case law and/or California Business and Professions Code section 6068(l).

COUNT FOUR

1. Every allegation in Count Three is realleged and incorporated herein by reference as if fully set forth herein.

2. In the Stipulation, you stipulated to certain facts constituting violations of the California Business and Professions Code and Rules of Professional Conduct. In entering into the Stipulation, you agreed that the stipulated facts contained therein would be binding upon you and may be

admitted as evidence without foundation should you be found to be in violation of the Stipulation. The Statement of Acts or Omissions of Respondent Which Are Admitted and Acknowledged by the Respondent Constituting a Basis for an Agreement in Lieu of Disciplinary Action, which is a part of the attached Stipulation, is hereby realleged and incorporated by reference as though fully set forth herein.

You committed the above-described acts in wilful violation of your oath and duties as an attorney under disciplinary case law and/or California Business and Professions Code sections 6068(a) and 6103 and former Rules of Professional Conduct 6-101(A)(2) and 6-101(2).

WITHIN TWENTY (20) DAYS after service of this Notice to Show Cause, you shall file a written answer as provided in rule 552, Transitional Rules of Procedure of the State Bar of California.

NOTICE - DEFAULT PROCEDURE!

YOUR DEFAULT MAY BE ENTERED FOR FAILURE TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN

TWENTY (20) DAYS AFTER SERVICE AS PRESCRIBED BY RULE 552, RULES OF PROCEDURE OF THE STATE BAR. SHOULD YOU TIMELY FILE AN ANSWER, YOUR DEFAULT MAY ALSO BE ENTERED FOR FAILURE TO APPEAR AT THE FORMAL HEARING. THE ENTRY OF YOUR DEFAULT MAY RESULT IN THE CHARGES SET FORTH IN THIS NOTICE TO SHOW CAUSE BEING ADMITTED AND DISCIPLINE RECOMMENDED OR IMPOSED BASED ON THOSE ADMITTED CHARGES. IF YOUR DEFAULT IS ENTERED, YOU WILL LOST THE OPPORTUNITY TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL YOUR DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE PRESCRIBED GROUNDS. SEE RULE 552.1-ET SEQ., TRANSITIONAL RULES OF PROCEDURE OF THE STATE BAR.

NOTICE - INACTIVE ENROLLMENT

YOU ARE HEREBY FURTHER NOTIFIED THAT-IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS

AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, THAT YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT. SEE RULES 550 AND 560, TRANSITIONAL RULES OF PROCEDURE OF THE STATE BAR.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10. SEE RULE 460 ET SEQ., TRANSITIONAL RULES OF PROCEDURE OF THE STATE BAR.

OFFICE OF TRIAL COUNSEL/

OFFICE OF TRIALS

THE STATE BAR OF CALIFORNIA

DATED: 1994 . BY: ELENA G. BARDELLINI

Deputy Trial Counsel/Examiner

STATE BAR OF CALIFORNIA
Office of the clerk
State Bar Court
1149 South Hill, 5th Floor
Los Angeles, California 90015
(213) 765-1400

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN THE MATTER OF

LAWRENCE CRAWFORD BRAGG

Transmittal of State Bar Court

Recommendation

A Member of the State Bar S

State Bar Court No. 85-0-12550

[ ]Conviction proceeding (rule 951(a), Cal. Rules of Ct.)

[ ]Rule 955 proceeding (rule 955, Cal. Rules of Ct.)

[XI original proceeding

(Bus. and Prof. Code § 6081)

other proceeding

[ ] other proceeding_____

_____

To the CLERK OF THE SUPREME COURT:

1. RECOMMENDATION. The State Bar Court hereby transmits its recommendation in the above-entitled matter, as reflected in the enclosed proposed order subject to review by the Supreme Court.

2. RECORD ENCLOSED. Enclosed please find the official State Bar Court file in the above-entitled matter including:

[XI State Bar Exhibits 1-19

[XI Respondent Exhibits A-H

[XI VOLUMES 1-11 Transcript(s) of State Bar Court Hearings

3. IMPOSITION OF COSTS. Pursuant to Section 6086.10, Business and Professions Code, statutorily

costs of this disciplinary proceeding should be awarded to the State Bar of California. Enclosed are the Certificate of Costs and Statements of Costs pursuant to rule 280-284, Rules of Procedure for State Bar Court Proceedings.

4. MEMBER'S ADDRESS:

State Bar records list the following current address for the above member:

15454 East Gale Avenue Hacienca Heights, CA 91745

5. INFORMATION GIVEN MEMBER. We have this day mailed to the member information about:

rule 951, California Rules of Court

re: Authority of the State Bar Court

rule 952, California Rules of Court

re: review of State Bar Court decision

rule 953, California Rules of Court

re: effective date of Supreme Court Order

rule 954, California Rules of Court

re: grounds for review of State Bar Court

decisions in Supreme Court

rule 955, California Rules of Court re: duties of disbarred, resigned or suspended members

Business & Professions Code Section 6083 re: petition to review State Bar Court decision

Business & Professions Code Section 6086.10 and

6140.7 Re: costs of disciplinary proceeding

6. [XI OTHER INFORMATION TO ASSIST THE SUPREME COURT:

This attorney has not had prior discipline imposed. We would like to bring to the Court's attention that Mr. Bragg currently has no matters pending with the Supreme Court.

Judy Duffield

Clerk of the State Bar Court

Dated: July 16, 1997

By Erick E. Estrada

Deputy Court Clerk

State Bar Court Case No. 85-0-12550

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE LAWRENCE CRAWFORD BRAGG ON DISCIPLINE

It is ordered that Lawrence Crawford Bragg be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including one year actual suspension, recommended by the Review Department of the State Bar Court in its opinion filed April 28, 1997. It is also ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See Segretti v. State Bar {1976} 15 Cal.3d 878, 891, fn.8). It is further ordered that he comply with Rule 955, California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule

within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 payable in accordance with Business and Professions Code section 6140.7, as amended effective January 1, 1997.

*See Business and Professions Code section 6126. subd, (c).

_____

Chief Justice

FILED July 16, 1997
STATE BAR COURT CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA
1149 SOUTH HILL STREET 5TH FLOOR
LOS ANGELES, CA 90015-2299
(212) 765-1400

In the Matter of

LAWRENCE CRAWFORD BRAGG

Member of the State Bar

CERTIFICATE OF COSTS CASE NO. 85-0-12550

Imposition of the following costs are recommended pursuant to Business and Professions Code Section 6086.10(b)(1)-(3):

1. Transcript Costs and Court Reporter's Fees.....1..$.....0

2. Taxable Cost Recoverable (see attached Statement(s) of Costs)

   a. Deposition Costs.....2a.$.....0

   b. Service of Process Costs.....2b.$.....0

   c. Witness Costs.....2c.$.....0

d. Court-ordered Transcripts.....2d. $.....0

e. Exhibit Costs..... . 2e. $.....0

f. Court-Ordered Expert Costs.....2f. $.....0

g. Other Taxable Costs.....2g $.....0

3. Reasonable Costs (see attached Statement(s) of Costs)

a. Office of Investigation Costs.....3a. $ 1,320.00

b. Office of Trial Counsel Costs.....3b. $ 1,143.00

c. Office of State Bar Court Costs..... 3c $ 1,851.00

TOTAL COSTS.....TOTAL $4,314.00

I, Judy Duffield, Clerk of the State Bar Court, do hereby certify that, to the best of my knowledge and belief, the above costs, based on this certificate and the accompanying cost statements are correct as provided by rule 461, Rules of Procedure of the State Bar of California.

Judy Duffield
Clerk of the State Bar Court

Date: August 28, 1996 By: (signed)

ERIK ESTRADA
DEPUTY COURT CLERK

STATEMENT OF COSTS

Office of the State Bar Court of the State Bar of California

In the Matter of LAWRENCE CRAWFORD BRAGG

Case Number(s) 85-0-12550

Pursuant to Business and Professions Code section 6086.10, it is requested that Lawrence Crawford Bragg, a member of the State Bar of California, be ordered to pay the following costs.

Reasonable Costs of the Office of the State Bar Court

1. **Level One Assessment** .... $_____

   [Stipulated disposition reached prior to filing of a Notice to Show Cause]

2. **Level Two Assessment** .... $_____

   [Stipulated disposition reached prior to time of trial]

3. **Level Three Assessment** .... $_____

   [Stipulated disposition reached at time of trial or trial not exceeding one day is conducted]

4. **Level Four Assessment** $ 1,851.00

[Trial exceeding one day is conducted]

5. **Resignation of Member with Charges Pending** $_____

Judy Duffield

Clerk of the State Bar Court

Date: July 16, 1997

By: (signed)

ERICK E. ESTRADA
Deputy Court Clerk

CERTIFICATE OF COSTS

Submitted by

the Office of The Chief Trial Counsel

The State Bar of California

In the Matter of Lawrence Crawford Bragg, 33302

Case Number(s) 85-0-12550, 93-0-17012, 93-0-18322

Pursuant to Business and Professions Code, it is requested that Lawrence Crawford Bragg, a member of the State Bar of California be ordered to pay the following costs.

TAXABLE COSTS

1. Deposition Costs $0.00
2. Exhibit Costs..... $0.00
3. Court-ordered Expert Costs..... $0.00.
4. Service of Process..... $0.00
5. Court-ordered reporting and Transcripts..... $0.00
6. Witness Costs..... $0.00
7. Other Reasonable Costs..... $0.00

Total Taxable Costs $0.00

Total Taxable Costs $0.00

REASONABLE COSTS OF INVESTIGATION, HEARING, REVIEW

1. Pursuant to State Bar Approved Models

   a. Office of Investigation $1,320.00

   b. Office of Trial Counsel.....$1,143.00

2. Extraordinary Costs

   a. Office of Investigation ..... $ 0.00

   b. Office of Trials.....$ 0.00

Total Costs of Investigation, Hearing, and Review....$2,463.00

TOTAL OF ALL COSTS.....$2,463.00

Dated: November 14,1995 BY: (SIGNED)

Linda E. Perry

Administrative Secretary

THE STATE BAR ACT

California Business and Professions Code

Sec. 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the

State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter. . .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would

qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6106 ACT OF MORAL TURPITUDE

The commission of any act involving moral turpitude, dishonesty or corruption... constitutes a cause for disbarment or

suspension.

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

. . . .